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FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF THE PROGRAMME AND METHODS OF WORK OF THE COMMISSION

Note by the secretariat

1. In paragraph 12 of resolution 1993/47, adopted on 9 March 1993, the Commission on Human Rights, inter alia, requested "the Secretary-General, in close collaboration with the thematic special rapporteurs and working groups, to issue annually their conclusions and recommendations".

2. Pursuant to this request, the annex to the present document contains the pertinent chapters of the reports submitted to the Commission on Human Rights at its fiftieth session by the thematic special rapporteurs and working groups.

3. During the past year, field missions were undertaken by the Special Rapporteur on extrajudicial, summary or arbitrary executions to Rwanda and Peru. The Special Rapporteur on the sale of children, child prostitution and child pornography carried out a mission to Nepal. The conclusions and recommendations made by both Special Rapporteurs after these visits, which specifically focus on the situation in the countries concerned, are contained in their respective mission reports (E/CN.4/1994/7/Add.1 and 2 and E/CN.4/1994/84/Add.1). Furthermore, one member of the Working Group on Enforced or Involuntary Disappearances visited the former Yugoslavia at the request of the Special Rapporteur on the situation of human rights in the territory of the former Yugoslavia. His concluding observations are set forth in his report on this visit (E/CN.4/1994/26/Add.1).

4. Furthermore, in paragraph 11 of resolution 1993/47, the Commission on Human Rights "requested the Secretary-General to consider the possibility of convening a meeting of all the thematic special rapporteurs and the Chairmen of working groups of the Commission on Human Rights in order to enable an exchange of views and closer collaboration". In addition, in the Vienna Declaration and Programme of Action, the World Conference on Human Rights has underlined the importance of preserving and strengthening the system of special procedures, special rapporteurs, experts and working groups of the Commission on Human Rights, calling for periodic meetings to enable these procedures and mechanisms to harmonize and rationalize their work. In this context, it is envisaged to convene a meeting of special rapporteurs, experts and working groups in spring 1994.

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Annex

I. Conclusions and recommendations by the Special Rapporteur on extrajudicial, summary or arbitrary executions (E/CN.4/1994/7, paras. 671-730)

V. CONCLUSIONS AND RECOMMENDATIONS

671. As in the past, at the end of a reporting cycle the Special Rapporteur finds himself compelled to report that extrajudicial, summary or arbitrary executions have not ceased to occur. On the contrary, armed struggles for power and territorial control have continued unabated in many parts of the world, often disguised as ethnic, religious or nationalistic conflicts. The former Yugoslavia, Angola, Liberia, Somalia, Rwanda and Burundi, Azerbaijan and Tajikistan are only a few examples that come to mind, where violations of the right to life, in particular of the civilian population, take place on a massive scale. The Special Rapporteur has also continued to receive increasing numbers of allegations of extrajudicial, summary or arbitrary executions and death threats attributed to government forces or groups cooperating with them or enjoying the acquiescence of the authorities.

672. The Special Rapporteur responded to these continuing violations of the right to life with a marked increase in the range of his activities (see above, chap. IV). On the basis of the information that has come before him, the Special Rapporteur focused his attention on two main areas of concern: violations of the right to life in the context of capital punishment and impunity enjoyed by perpetrators of violations, which has important implications for almost all other types of extrajudicial, summary or arbitrary executions, particularly for their prevention. In compliance with the requests made to him by the Commission on Human Rights (see chap. I), the Special Rapporteur also paid special attention to a number of other issues. This chapter contains his conclusions and recommendations regarding these questions as well as on a number of procedural points and other matters of concern to the Special Rapporteur.

A. Capital punishment

673. In its resolution 1993/71, the Commission on Human Rights requested the Special Rapporteur to "continue monitoring the implementation of existing international standards on safeguards and restrictions relating to the imposition of capital punishment, bearing in mind the comments made by the Human Rights Committee in its interpretation of article 6 of the International Covenant on Civil and Political Rights, as well as the Second Optional Protocol thereto".

The desirability of abolition of the death penalty

674. Capital punishment is not yet in itself prohibited under international law. However, in its comments on article 6 of the Covenant, the Human Rights Committee observed that this provision "also refers generally to abolition in terms which strongly suggest that abolition is desirable (paras. 6 (2) and (6)). The Committee concludes that all measures of abolition should be considered as progress in the enjoyment of the right to life (...)." 1/

The desirability of abolition was also expressed repeatedly by the General Assembly. 2/ Moreover, in re-approving article 6, paragraph 6, of the International Covenant on Civil and Political Rights, the Economic and Social Council, in its resolution 1984/50, adopted the Safeguards guaranteeing protection of the rights of those facing the death penalty, on the understanding that they should not be invoked to delay or to prevent the abolition of capital punishment.

675. Article 6, paragraph 2, of the Covenant provides that "in countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes... ". The General Assembly has referred to article 6 as forming part of the "minimum standard of legal safeguards" for the protection of the right to life in a number of resolutions concerning summary or arbitrary executions, most recently in paragraph 12 of resolution 45/162 of 18 December 1990. In its comments on article 6 of the Covenant, the Human Rights Committee stated that "the expression 'most serious crimes' must be read restrictively to mean that the death penalty should be a quite exceptional measure", limited to offences with lethal or "other extremely grave consequences". 3/

676. The Special Rapporteur has received with concern reports of the extension of the scope of capital punishment to offences previously not punishable by death in a number of countries. In Bangladesh, the Curbing of Terrorist Activities Act 1992 reportedly extends the scope of the death penalty to a number of offences under the heading of "terrorism", which had previously been sanctioned with imprisonment. In China, the range of capital offences has been broadened since the Chinese Penal Code came into force in 1979. Currently, some 65 criminal offences are punishable by death in China, including crimes such as "speculation", "corruption" or "bribery". Law No. 97 of 1992 significantly enlarged the number of capital offences in Egypt. In May 1991, Pakistan introduced a mandatory death penalty in cases of blasphemy and it was reported that the Government was planning to extend it to drug-related offences in August 1993. The new Peruvian Constitution, approved by referendum on 31 October 1993, widens the scope of capital punishment to cover crimes of terrorism and treason (see E/CN.4/1994/7/Add.2, paras. 74-78). In Saudi Arabia, two fatwas, in 1987 and 1988, extended the range of capital offences to a number of drug-related offences and to acts of "sabotage" or "corruption on earth" that "undermine security and endanger lives and public or private property". Previously, such offences were punishable by death only if loss of life was involved. According to reports recently received, a federal crime bill is currently being drafted in the United States of America which would extend the death penalty to 47 offences which, at present, are not punishable by death.

677. Loss of life is irreparable. The Special Rapporteur therefore strongly supports the conclusions of the Human Rights Committee and emphasizes that the abolition of capital punishment is most desirable. The scope of application of the death penalty should never be extended and the Special Rapporteur invites those States which have done so to reconsider.

Fair trial

678. All safeguards and guarantees for due process, both at pre-trial stages and during the actual trial before a court, as provided for by several international instruments such as the Universal Declaration of Human Rights (arts. 10 and 11), the International Covenant on Civil and Political Rights (arts. 9, 14 and 15), the Safeguards guaranteeing protection of all those facing the death penalty as well as Economic and Social Council resolution 1989/65 on their implementation, must be fully respected in all cases, and especially where the life of the defendant is at stake.

679. In particular, proceedings leading to the imposition of capital punishment must conform to the highest standards of independence, competence, objectivity and impartiality of judges and juries. All defendants in capital cases must benefit from the fullest guarantees for an adequate defence at all stages of the proceedings, including adequate provision for State-funded legal aid by competent defence lawyers. Defendants must be presumed innocent until their guilt has been proven without leaving any room for reasonable doubt, in application of the highest standards for the gathering and assessment of evidence. All mitigating factors must be taken into account. A procedure must be guaranteed in which both factual and legal aspects of the case may be reviewed by a higher tribunal, composed of judges other than those who dealt with the case at the first instance. In addition, the defendants' right to seek pardon or commutation of the death sentence must be ensured.

680. During the past year, the Special Rapporteur received numerous and alarming reports about legislation and practice leading to the imposition and execution of death sentences where the defendants did not fully benefit from these guarantees and safeguards. Such reports concerned the following countries (for details see chap. IV): Algeria, Azerbaijan, Bangladesh, China, Comoros, Egypt, Iran (Islamic Republic of), Kuwait, Kyrgyzstan, Malawi, Malaysia, Nigeria, Pakistan, Peru, Saudi Arabia, Sierra Leone, South Africa, the Syrian Arab Republic, Tajikistan, Turkmenistan, United States of America, Uzbekistan, Yemen.

681. The Special Rapporteur is particularly concerned at reports indicating a tendency towards the establishment of special jurisdictions to speed up proceedings leading to capital punishment in certain cases, particularly in response to acts of violence committed by armed opposition groups. Such special courts often lack independence, for example, because the judges are accountable to the executive, or because they are military officers on active duty within the chain-of-command structure of the army. Time-limits which are sometimes set for the conclusion of the different trial stages before such special jurisdictions gravely affect the defendants' right to an adequate defence. Concerns have also been expressed at limitations on the right to appeal in the context of special jurisdictions. In some cases, the law establishing special courts also provides for an extension of the scope of capital offences. The Special Rapporteur notes that, as a general rule, the standards of due process and respect for the right to life before such jurisdictions are lower than in ordinary criminal proceedings. He wishes to refer, in this context, to the sections of this report on Algeria, Egypt, Kuwait, Malawi, Nigeria, Pakistan, Peru and the Syrian Arab Republic.

682. The Special Rapporteur wishes to refer to a recent judgement of the Judicial Committee of the Privy Council of the United Kingdom of Great Britain and Northern Ireland, wherein it held that the execution of a death sentence five years after it had been handed down would constitute cruel and inhuman punishment. Consequently, the death sentences of two prisoners in Jamaica who had been awaiting execution for more than five years were commuted to life imprisonment. The Supreme Court of Zimbabwe recently reached a similar conclusion. While welcoming the decisions, the Special Rapporteur wishes to express concern that they might encourage Governments to carry out executions of death sentences more speedily. This might, in turn, affect defendants' rights to full appeal procedures, including new hearings if additional evidence is discovered even years later. The Special Rapporteur feels that these judgements should rather be interpreted in the light of the desirability of the abolition of capital punishment: if, as a first step, it is recognized that awaiting execution for five years constitutes in itself cruel and inhuman punishment, the second, towards the rejection of capital punishment as such, may be easier to take.

683. In summary, judicial errors can no longer be remedied once a death sentence has been carried out. The Special Rapporteur urges the Governments of all States in which the death penalty has not yet been abolished to ensure that proceedings which may lead to the imposition of the death penalty are conducted in accordance with the highest standards of due process and that defendants fully benefit from all safeguards and guarantees set forth in the pertinent international instruments.

684. The Special Rapporteur calls particularly on the Governments of Algeria, China, Egypt, the Islamic Republic of Iran, Kuwait, Malawi, Malaysia, Nigeria, Pakistan, Peru, the Syrian Arab Republic, Tajikistan and the United States of America to revise their legislation governing procedures for trials where the imposition of capital punishment is at stake so as to make them conform to the pertinent international instruments.

Special restrictions on the application of the death penalty

685. Article 6, paragraph 5, of the International Covenant on Civil and Political Rights stipulates that "sentence of death shall not be imposed for crimes committed by persons below eighteen years of age". A number of other international instruments also prohibit the capital punishment of juvenile offenders, in particular the Convention on the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), and the Safeguards guaranteeing protection of the rights of those facing the death penalty. The reports received concerning the imposition and execution of death sentences in cases involving minors in Egypt, Pakistan and the United States of America are most disturbing. The Special Rapporteur is also deeply concerned at legislation allowing for death sentences for minors in Algeria, China and Peru.

686. Furthermore, international law prohibits the capital punishment of mentally retarded or insane persons, pregnant women and mothers of young children. In this context, the Special Rapporteur refers to allegations he has received concerning executions of mentally retarded persons in the United States of America.

687. The Special Rapporteur urges the Governments of Algeria, China, Egypt, Pakistan, Peru and the United States to consider which measures may be more suitable than the death penalty to promote rehabilitation and reinsertion into society of juvenile or mentally retarded offenders.

B. Impunity

688. Governments are obliged under international law to carry out exhaustive and impartial investigations into allegations of violations of the right to life, to identify, bring to justice and punish their perpetrators, to grant compensation to the victims or their families, and to take effective measures to avoid future recurrence of such violations. The first two components of this fourfold obligation constitute in themselves the most effective deterrent for the prevention of human rights violations. Conversely, if perpetrators may be certain that they will not be held responsible, such violations are most likely to continue unabated. The recognition of the duty to compensate victims of human rights violations, and the actual granting of compensation to them, presupposes the recognition by the Government of its obligation to ensure effective protection against human rights abuses on the basis of the respect for the fundamental rights and freedoms of every person.

689. Economic and Social Council resolution 1989/65 of 24 May 1989 on the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions sets forth in detail the aforementioned obligations. In addition, as regards deaths as a result of excessive use of force, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials provide that arbitrary or abusive use of force and firearms by law enforcement officials is to be punished as a criminal offence under national law (principle 7). In May 1991, the Crime Prevention and Criminal Justice Branch of the United Nations Centre for Social Development and Humanitarian Affairs published a document of major importance for guaranteeing the right to life. Entitled Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (ST/CSDHA/12), it lays down procedures for conducting investigations into extra-legal executions or killings.

690. In practice, however, human rights violations and, in particular, violations of the right to life continue to be perpetrated with impunity in very many countries. The reports and allegations that have come before the Special Rapporteur indicate that grave breaches of the above-mentioned obligation occur at all levels.

691. In some cases, the basis for impunity may be legislation which exempts perpetrators of human rights abuses from prosecution. The Special Rapporteur received reports about amnesty laws in El Salvador and Mauritania. He was also informed about provisions granting members of the security forces immunity from prosecution in Bangladesh (Bangladesh Penal Code) and South Africa (Further Indemnity Act). In this context, the Special Rapporteur wishes to emphasize that "under no circumstances ... shall blanket immunity from prosecution be granted to any person allegedly involved in extra-legal, summary or arbitrary executions" (principle 19 of the Principles on the Effective Prevention and Investigation of Extra-legal, Summary or Arbitrary Executions). Even if, in exceptional cases, Governments may decide that

perpetrators should benefit from measures that would exempt them from or limit the extent of their punishment, their obligation to bring them to justice and hold them formally accountable remains, as does the obligation to carry out prompt, thorough and impartial investigations, grant compensation to the victims or their families and adopt effective preventive measures for the future. The Special Rapporteur appeals to all Governments concerned to revise any legislation as may be in force exempting those involved in violations of the right to life from prosecution.

692. However, in many countries where the law provides for the prosecution of human rights violators, impunity is the practice. Often, no investigation at all is initiated into cases of alleged violations of the right to life. Authorities do not react to complaints filed by the victims, their families or representatives, or by international organs, including the Special Rapporteur. In this context, it should be recalled that Governments are under obligation to initiate inquiries into allegations ex officio as soon as they are brought to their attention, particularly where the alleged violation of the right to life is imminent and effective measures of protection must be adopted by the authorities. Also, legislation should permit victims or their families or representatives to initiate such proceedings. The Special Rapporteur therefore calls on all Governments to enact legislation enabling the competent authorities to fulfil their obligations under international law irrespective of whether or not the victims are able to provide evidence to identify the authors of human rights abuses against them, and to ensure that these obligations are fully implemented in practice.

693. In other instances, victims or witnesses are said to be too afraid to complain to the authorities, particularly where they perceive to be under threat from exactly the same authorities that are supposed to protect them. The Philippine Human Rights Commission, for example, repeatedly informed the Special Rapporteur that persons were too afraid to testify or file complaints before the authorities. Disturbing reports about death threats against, or even extrajudicial killings of persons who had witnessed human rights violations and, in some cases, testified before investigating organs were received concerning Brazil, Colombia, Guatemala and Peru. In other cases, the State organs which should carry out the investigations were themselves under threat, as was reported with regard to public prosecutors in Peru or the judiciary in Chad. The Special Rapporteur urges all Governments to ensure effective protection for all those who participate, as witnesses, prosecutors, judges, court officials or in any other capacity, in investigations of alleged human rights violations.

694. There are also countries where there is no independent judiciary that could carry out such investigations, or where the justice system simply does not work in practice. Cambodia was reported to the Special Rapporteur as an example in this regard. In Peru and Rwanda, too, the civilian justice system does not function properly. In such cases, reforms should be carried out to enable the judiciary to fulfil its functions. It should count on an adequate number of judges, court officials and prosecutors and sufficient material. The independence of the judges should be guaranteed by law and fully respected in practice.

695. In the absence of a functioning civilian justice system, or in cases which warrant particular treatment because of their special nature or gravity, Governments may envisage establishing special commissions of inquiry. They must fulfil the same requirements of independence, impartiality and competence as judges in ordinary courts. The results of their investigations should be made public, and their recommendations should be binding for the authorities. The Special Rapporteur is concerned that the establishment of such commissions is sometimes only announced but not put into practice, as was reported in the case of Chad; that recommendations made by such commissions are not or not always followed, such as in Mexico; or that such commissions do not fulfil the above-mentioned requirements and are, in reality, tools to evade the obligation to carry out thorough, prompt and impartial investigations into alleged violations of the right to life.

696. In other cases, investigations are initiated without, however, leading to the punishment of members of the security forces or paramilitary and other groups cooperating with them or acting with their acquiescence. Where perpetrators of such violations are brought to justice and sentenced, these sentences are often not proportionate to the gravity of the offences, as was reported in the case of the Santa Cruz massacre in East Timor or the killings of peasants in Accomarca and Santa Bárbara in Peru (see E/CN.4/1994/7/Add.2, paras. 32 and 53). On other occasions, low-ranking members of security forces have been convicted and sentenced for having carried out human rights violations, while those in positions of command escaped their responsibility for having planned and ordered these violations. The Special Rapporteur calls on all Governments to prosecute all those involved in the planning and carrying out of alleged extrajudicial, summary or arbitrary executions, including those who, although in a position of authority, have not made any attempts to prevent them.

697. The problem of military jurisdiction over alleged perpetrators of human rights violations has once again been raised in this regard. Sometimes, the fact that the civilian justice system does not function properly is invoked by the authorities to justify trials before military tribunals. Ample information received by the Special Rapporteur indicates that, in practice, this almost always results in impunity for the security forces. The Special Rapporteur therefore once again appeals to all Governments concerned to provide for an independent, impartial and functioning civilian judiciary to deal with all cases of alleged violations of the right to life. The Special Rapporteur also calls on the authorities to ensure that the security forces fully cooperate with the civilian justice system in its efforts to identify and bring to justice those responsible for human rights violations.

698. The Special Rapporteur considers the implementation of Commission resolutions 1993/33 and 1992/24 to be a matter of high priority. In this regard, he would like to stress the need for expertise in forensic pathology, anthropology and archaeology in order to conduct excavations of mass graves and examine human remains found therein. In this context, efforts to establish a standing team of internationally recognized experts in this field who could provide advice and assistance to national investigating organs should be continued.

699. The link between the effective investigation of human rights violations of the right to life and the prevention of their recurrence in the future cannot be over-emphasized. Consequently, the Special Rapporteur calls on all Governments to comply fully with their obligation under international law to ensure that thorough, prompt and impartial investigations are carried out into all allegations of the right to life and that all those involved in their planning and execution be identified, brought to justice and punished in accordance with the gravity of the offence, regardless of any rank, office or position they may hold.

C. Allegations received and acted upon by the Special Rapporteur

Death threats

700. The Special Rapporteur received allegations concerning death threats or fear for the lives and physical security of more than 380 persons. He continues to view urgent appeals on behalf of those under threat as an essential part of his mandate. In the past year, he has transmitted urgent appeals with the aim of preventing loss of life to the Governments of: Argentina, Bangladesh, Brazil, Burundi, Chad, Ecuador, El Salvador, India, Indonesia, Iran (Islamic Republic of), Panama, Papua New Guinea, Paraguay, Peru, Philippines, Rwanda, South Africa, Sri Lanka, Togo, Turkey, Venezuela and Zaire. In almost all of these countries, the lives of human rights activists, members of the political opposition, trade unions, community workers, writers and journalists were reported to be at serious risk. The Special Rapporteur is particularly concerned about Colombia, where he intervened by sending 26 urgent appeals, and Guatemala, where he sent 25 urgent appeals. Furthermore, the Special Rapporteur noted with deep concern reports about the alleged execution, while in custody, of a prisoner in Azerbaijan, and the killing of two mothers of disappeared children in Brazil. In both cases, he had urged the authorities to ensure their protection. It is also most disturbing that in countries such as Brazil, Colombia, Guatemala, South Africa and Turkey, patterns of intimidation and threats seem to persist for years.

701. The Special Rapporteur urges all Governments to adopt effective measures, in accordance with the requirements of each particular case, to ensure full protection of those who are at risk of extrajudicial, summary or arbitrary execution. The Special Rapporteur calls on the authorities to conduct investigations into all instances of death threats or attempts against lives which are brought to their attention, regardless of whether or not any judicial or other procedures have been activated by those under threat.

Deaths in custody

702. The Special Rapporteur received numerous reports concerning deaths in custody in Azerbaijan, Cambodia and Sierra Leone. Such deaths were alleged to be the result of torture or other cruel, inhuman and degrading treatment in Bangladesh, Cuba, Ecuador, India, Indonesia, Israel, Mexico, Nepal, Peru, South Africa, Turkey and Yugoslavia. The Special Rapporteur also received allegations of deaths in custody due to medical neglect or otherwise untenable prison conditions in Cuba, Morocco and Togo. A particular form of death while

in detention was reported, as in former years, in Myanmar, where Muslim villagers continue to be forced by the military to serve as porters and die after torture or simply because they are too weak to carry on.

703. The Special Rapporteur appeals to all Governments to ensure that conditions of detention in their countries conform to the Standard Minimum Rules for the Treatment of Prisoners and other pertinent international instruments. He also urges them to make efforts to ensure full respect of the international norms and principles prohibiting any form of torture or other cruel, inhuman or degrading treatment. Prison guards and other law enforcement personnel should receive training so as to be familiar with these norms as well as the rules and regulations concerning the use of force and firearms to prevent escape or control disturbances. The Special Rapporteur also calls on the competent authorities to prosecute and punish all those who, through action or omission, are found responsible for the death of any person held in custody, in breach of the aforementioned international instruments.

Deaths due to abuse of force by law enforcement officials

704. The Special Rapporteur received a considerable number of allegations concerning violations of the right to life as a consequence of excessive or arbitrary use of force. Cases in this category were reported in Brazil, Cameroon, Chad, Chile, the Comoros, Egypt, Honduras, Israel and Venezuela. In Bangladesh, Cameroon, Chad, Chile, the Central African Republic, El Salvador, India, Lebanon, Malawi, Nepal, South Africa and Zaire, hundreds of people were reportedly killed by security forces using excessive force against participants in demonstrations and other manifestations. The Special Rapporteur was particularly shocked by reports about deliberate use of firearms against young children by Israeli security forces and Brazilian military police.

705. The Special Rapporteur calls on all Governments to ensure that the security forces receive thorough training in human rights matters and, in particular, with regard to the restrictions on the use of force and firearms in the discharge of their duties. Such training should include methods of keeping crowds of people under control without resorting to excessive force. Full and independent investigations must be carried out into alleged deaths due to abuse of force, and all law enforcement officials responsible for violations of the right to life must be held accountable.

Violations of the right to life during armed conflicts

706. The Special Rapporteur received increasing numbers of reports concerning deaths as a consequence of armed conflicts, both international and internal, in various parts of the world. Massive violations of the right to life were said to have been committed against combatants who had been captured, or after they had laid down their arms, and particularly civilians. This was reported, for example, in Angola, Azerbaijan, Cambodia, Chad, Djibouti, Liberia, Papua New Guinea, Sierra Leone, Somalia, Sri Lanka, the Sudan, Tajikistan, Turkey and the conflict areas in the former Yugoslavia. Thousands of people were reportedly killed, either as a direct consequence of the hostilities - through deliberate and indiscriminate shelling of residential areas, often with heavy weaponry including aerial bombardments,

and deliberate executions - or indirectly, as a result of sieges, blocking off water, food and medical supplies, refusal to evacuate sick or wounded persons. Children, elderly and those in poor health are particularly affected by such measures.

707. The Special Rapporteur calls on all parties to conflicts, international or internal, to respect the norms and standards of international human rights and humanitarian law which protect the lives of the civilian population and those combatants who are captured or lay down their arms. He also appeals to all those involved in armed conflicts to allow convoys of humanitarian aid to reach their destinations as well as to allow the evacuation of the wounded, elderly persons and children. All those responsible for violations of the right to life in situations of armed conflicts must be held accountable. In this context, the Special Rapporteur particularly wishes to endorse the appeals for respect for the right to life made by the Special Rapporteurs on the situation of human rights in the Sudan and, on repeated occasions, by the Special Rapporteur on the human rights situation in the territory of the former Yugoslavia.

708. In this context, the Special Rapporteur wishes to refer to the role of the United Nations in situations of armed conflict. Increasingly often called upon to exercise peace-keeping tasks, United Nations personnel in many countries are operating under very difficult and often dangerous conditions. A high number of United Nations staff have on many occasions risked, and lost, their lives. However, in the recent past reports have been received indicating that members of United Nations forces were themselves involved in extrajudicial, summary or arbitrary killings in Somalia. The Special Rapporteur is of the view that, as each State is bound under international law to respect these standards, an organ representing States in their collectivity has at least the same degree of responsibility. A human rights component should be an integral part of all peace-keeping and observer missions. As such missions under the auspices of the United Nations multiply, it may be desirable to envisage the institution of an organ within the United Nations, or within each peace-keeping or observer mission, to investigate human rights abuses by members of such missions and hold their authors responsible. Provision should also be made to grant compensation to the victims of such abuses or, in the case of extrajudicial killings, their families. With a view to preventing such incidents, all members of peace-keeping and observer missions should receive thorough training in human rights matters as well as in mediation and conflict resolution.

Violations of the right to life in the context of communal violence

709. The Special Rapporteur would once again like to draw the attention of the international community to the problem of communal violence, understood as acts of violence committed by groups of citizens of a country against other groups. In Burundi, Nigeria, Rwanda and Zaire, where violent confrontations were reported between different ethnic groups, government forces allegedly not only did not intervene to stop the violence but actively supported one side in the conflict, or even began it. In other instances, Governments, for example those of Bangladesh and Sri Lanka, denied their responsibility for killings, asserting that they occurred in the context of communal violence. Such conflicts, if allowed to continue, may degenerate into genocide. Effective

steps should therefore be taken by Governments of countries where acts of communal violence occur to curb such disturbances at an early stage. The Special Rapporteur also strongly appeals to all Governments to refrain from supporting groups, on ethnic or other grounds, either actively or by simply tolerating acts of violence committed by them. On the contrary, efforts should be made towards reconciliation and peaceful coexistence of all parts of the population, regardless of ethnic origin, religion or any other distinction. Mass communication media and campaigns of education and information promoting mutual respect should be used in this regard. Furthermore, all acts of incitement to hatred or violence must be punished.

Expulsion of persons to a country where their life is in danger

710. The Special Rapporteur received reports about the imminent extradition of one or more persons to countries where their lives might be at risk. All Governments should take due notice of the norms and principles contained in international instruments that refer to this particular question. They should refrain from extraditing a person in circumstances where his or her safety is not fully guaranteed.

Rights of the victims

711. As stated earlier, the recognition of the right of victims or their families to receive adequate compensation is both a recognition of the State's responsibility for the acts of its organs and an expression of respect for the human being. Granting compensation presupposes compliance with the obligation to carry out an investigation into allegations of human rights abuses with a view to identifying and prosecuting their perpetrators. Financial or other compensation provided to the victims or their families before such investigations are initiated or concluded, however, does not exempt Governments from this obligation. The Special Rapporteur notes with concern that, with the exception of Nepal, no Government provided him with information about any such compensation provided to victims or their dependants. The Special Rapporteur urges States to make pertinent provisions under national legislation and set up funds for those who have suffered damage as a consequence of extrajudicial, summary or arbitrary execution or attempted execution.

D. Issues of special interest to the Special Rapporteur

Freedom of opinion and expression

712. More than 700 cases which were brought to the attention of the Special Rapporteur during the past year concerned alleged violations of the right to life involving a breach of the right to freedom of opinion and expression, peaceful assembly and association. Extrajudicial killings as a result of abuse of force against demonstrators and participants in other peaceful manifestations have been referred to earlier. The Special Rapporteur is deeply concerned at the large numbers of reported death threats, assassination attempts and extrajudicial executions of members of legal political opposition parties, trade unions, student movements and community organizations, human rights groups and activists, as well as journalists, writers and persons assisting indigenous people and peasants in Argentina, Brazil, Cambodia, Chad,

Colombia, El Salvador, Equatorial Guinea, Guatemala, Haiti, India, Malawi, Paraguay, Peru, the Philippines, Rwanda, South Africa, Turkey and Zaire.

713. The Special Rapporteur is particularly preoccupied by reports of "hit squads" or "death squads" linked to the authorities, which are said to be instruments of violent repression of any political opposition. Such groups, often said to be composed of members of the security forces, allegedly carry out orders to intimidate or eliminate persons perceived as a threat to Governments or certain political parties. Disturbing allegations to this effect were received concerning Brazil, Colombia, Guatemala, El Salvador, Haiti, Kenya, Peru, South Africa and Turkey. Agents linked to the security forces of the Islamic Republic of Iran were said to be responsible for the killing of political opponents in Italy, Pakistan and Turkey.

714. The Special Rapporteur calls on all Governments to fully respect the right of all persons to freedom of opinion and expression, peaceful assembly and association, as guaranteed in the pertinent international instruments. He urges the authorities of those countries in which death squads or similar structures are alleged to exist to carry out full investigations with a view to eliminating such groups and identifying and prosecuting their members, as well as all those under whose orders they are found to operate.

Violations of the right to life of women

715. In 168 cases, the victims of reported violations of the right to life were women. As stated earlier, this figure does not necessarily reflect the actual proportion of women among those on whose behalf the Special Rapporteur intervened. This is due to the fact that several cases concerned alleged extrajudicial, summary or arbitrary executions of groups of unidentified civilians, where it was not specified how many women were among those killed. In other cases, the Special Rapporteur could not discern the sex of a person simply by the name and the source did not indicate whether the allegation concerned a man or a woman.

716. However, women make up a relatively small percentage of purported victims of extrajudicial, summary or arbitrary executions or death threats reported to the Special Rapporteur. Women appear not to be particularly targeted for reasons of their sex. This may partly be explained by the fact that women continue to play a small role in the political and economic life of many countries. The underrepresentation of women in positions of influence, for example in political parties or trade unions, or in professions such as law or journalism, means that they are also less exposed to acts of violence at the hands of Governments that may perceive them as a threat. On the other hand, in areas where women are actively participating in public life, they do not seem to be in a different position from their male counterparts, as may be illustrated by the following cases acted upon by the Special Rapporteur in the past year: Peruvian journalist Cecilia Valenzuela, allegedly threatened with death by the security forces; human rights activists Hebe de Bonafini and journalists Magdalena Ruiz Guiñazú, Mónica Cahen d'Anvers and Graciela Guadalupe in Argentina; missionary Elsa Rosa Zotti, lawyers Valdenia Brito, Katia Costa Pereira and Cecilia Petrina de Carvalho, as well as mothers of disappeared children pressing for an investigation into

their abduction in Brazil; human rights activists Nineth de Montenegro, Rosalina Tuyuc, Angela María Contreras Chávez and Rigoberta Menchú in Guatemala; lawyers Mirna Perla de Anaya in El Salvador and Gloria Estrago in Paraguay; as well as Leyla Zana, Member of Parliament in Turkey.

Armed groups that spread terror among the population and drug traffickers

717. Violence by armed opposition groups constitutes a serious problem in a number of countries: the situations in Algeria, Colombia, Egypt, Guatemala, parts of India, Myanmar, Peru, the Philippines, Sri Lanka and Turkey are well-known examples in this regard. The Special Rapporteur wishes to express his most profound repugnance at the acts of violence committed by these armed opposition groups, which are responsible for grave human and material losses in these countries. He fully understands that the Governments concerned and their security forces face an extremely difficult task in attempting to curb violence by such groups, in particular where they resort to terrorist methods, indiscriminately targeting civilians. However, the Special Rapporteur is concerned at reports according to which operations by the security forces aimed at fighting such armed opposition groups very often result in extrajudicial, summary or arbitrary executions. Algeria and Egypt, for example, have executed death sentences against persons convicted of terrorism after trials which fall short of the international standards for the protection of those facing capital punishment. In all other aforementioned countries, security forces allegedly extrajudicially executed civilians whom they perceived to be collaborators or sympathizers of the armed opposition groups. In Colombia, Guatemala and Sri Lanka it was also reported that residential areas were bombarded by the military. In a number of countries, where drug traffickers are also said to be responsible for killings of members of the security forces and civilians. According to the information received, drug traffickers in Colombia, Costa Rica and Peru have increased their influence by establishing links with armed opposition groups.

718. In this context, the Special Rapporteur wishes to emphasize that the right to life is absolute and must not be derogated from, even under the most difficult circumstances. This means that Governments must respect the right to life of all persons, including members of armed groups that demonstrate their total disrespect for the lives of both State representatives and civilians. The Special Rapporteur urges the Governments of all countries where such groups are active to ensure that counter-insurgency operations are conducted in a way so as to minimize the loss of lives. Security forces should receive proper training in this regard, and excessive use of force should be sanctioned.

Civil defence forces

719. In several countries, civilians, particularly in rural and/or remote areas, have formed groups of self-defence in situations where they feel that their lives or property are threatened. While such threats may emanate from common criminality, for example cattle thieves, civil defence forces are frequent in areas where armed opposition groups operate. Often, they are supported or even set up by the security forces and integrated into the Governments' counter-insurgency strategy. This was reported to be the case,

for example, with the Bangladesh Rifles and Ansar Guards in Bangladesh; the civil self-defence patrols (PAC) in Guatemala, the rondas campesinas and comités de defensa civil in Peru; the Citizen's Armed Forces Geographical Units (CAFGUs) in the Philippines; or the Kontrgerilla and Village Guards in Turkey. The Special Rapporteur received numerous reports about extrajudicial, summary or arbitrary executions committed by members of such groups, either in cooperation with units of the security forces or with their acquiescence. With very few exceptions, they were said to enjoy impunity for their actions. Often, the victims of such killings were said to be peasants suspected of being members or sympathizers of the armed opposition because they refused to join the, ostensibly voluntary, civil defence groups.

720. The Special Rapporteur appeals to the Governments of all countries where such civil defence structures exist to ensure full respect of human rights by the members of these groups. In particular, they should be trained to act in conformity with the restrictions on the use of force and firearms for law enforcement officials. All arms used by such groups, particularly if provided by the military, should be registered and their use subjected to strict control. All abuses should be punished, and effective measures should be taken to prevent their occurrence. Furthermore, no one should be forced to participate in civil defence groups.

Right to life and administration of justice

721. Respect for human rights within the administration of justice is of relevance to the Special Rapporteur's mandate in the field of capital punishment. In this context, the Special Rapporteur wishes to refer to paragraphs 673 to 687 above, concerning the right of defendants in capital cases to benefit fully from all guarantees of due process. In addition, the Special Rapporteur takes fair trial requirements into account when he evaluates proceedings that lead to the conviction and punishment of perpetrators of violations of the right to life. The Special Rapporteur appeals to all Governments to provide for legislation governing trial procedures in full conformity with the safeguards and guarantees embodied in the pertinent international instruments. He also urges all Governments to ensure that these safeguards and guarantees are fully ensured in practice. Effective protection should be ensured for all those forming part of the justice system. Particular attention should be given to the security of judges, prosecutors and lawyers where they may face threats or even attempts against their lives in the context of terrorist violence or corruption among political leaders.

Violations of the right to life of minors, particularly "street children"

722. The Special Rapporteur is deeply concerned at reports about violations of the right to life of minors and, in particular, children and adolescents without homes. Death threats against, and extrajudicial killings of "street children" have been reported in Brazil, Colombia and Guatemala. Reports of attacks against those who provide this particularly vulnerable group with shelter and education programmes, for example the collaborators of Casa Alianza in Guatemala or persons linked with the church in Brazil, are also very disturbing. The Special Rapporteur also wishes to express deep concern for violations of the right to life of minors in armed conflicts.

Children are among those who suffer most from lack of food and medicine as a result of deliberate blocking of humanitarian aid and assistance in conflict areas. They were also said to have died in large numbers as victims of indiscriminate attacks against residential areas. In addition, the Special Rapporteur received numerous reports of incidents in which children, even very young ones, were deliberately shot by members of the security forces, for example in the Occupied Territories or in Sri Lanka. As regards the question of capital punishment for minors, see above, paragraphs 685-687.

723. The Special Rapporteur calls on all Governments to ensure full respect for the right to life of children. He urges Governments in countries where children are forced to live in the streets to provide them with food, shelter and education programmes and to effectively protect them from violence in any form.

E. Procedural aspects

724. The Special Rapporteur wishes to thank all those, both individuals and non-governmental organizations, who have provided him with information and support in the discharge of his mandate. He also wishes to express his appreciation for the cooperation he received from a number of Governments, in particular those who have invited him to carry out visits to their countries. The Special Rapporteur regrets that a number of Governments did not supply him with any of the information he requested.

725. The Special Rapporteur would also like to thank all other United Nations mechanisms and procedures for the protection of human rights from whose cooperation he benefited during the past year and, in particular, the Special Rapporteur on the question of torture, the representative of the Secretary for internally displaced persons and the Committee on the Rights of the Child. The Special Rapporteur also wishes to thank the ad hoc Working Group of Experts on Southern Africa for its invitation to participate in their mission to Botswana and Zimbabwe in August 1993.

726. As stated earlier, the Special Rapporteur received, and transmitted to 73 Governments, allegations of the right to life concerning more than 3,700 persons. In 217 urgent appeals he urged the competent authorities to ensure effective protection of persons whose lives were feared to be at risk. This constitutes an increase of almost 50 per cent, as compared with the number of urgent appeals sent in 1992. In over 90 letters, the Special Rapporteur asked Governments to fulfil their obligation under international law to investigate human rights violations, bring to justice those responsible and grant compensation to the victims. The Special Rapporteur made an effort to transmit these allegations to the Governments earlier in the year to allow for more time to reply, as announced in his report to the Commission on Human Rights at its forty-ninth session. The Special Rapporteur believes that the initiation of the follow-up procedure, as described in chapter II of this report, constitutes an important new element in the working of his mandate. The Special Rapporteur also hopes that his visits to the former Yugoslavia, Rwanda and Peru, as well as his participation in numerous public and private events, may contribute to promoting respect for the right to life and awareness of United Nations human rights procedures and mechanisms.

727. It has become evident, however, that unless the resources of the Secretariat are increased considerably, it will be impossible to assure the day-to-day work of the mandate. The Special Rapporteur continues to count on two staff members at the Centre for Human Rights, only one of them full-time. The amount of work involved in the assessment of the incoming information, almost daily urgent appeals, thorough follow-up, preparation of missions, etc. would require at least three staff members and one secretary working exclusively on the mandate. The Special Rapporteur hopes that the strengthening of the resources of the Secretariat announced at the World Conference on Human Rights in Vienna in June 1993 will soon be put into practice.

728. While appreciating the opportunity provided at the World Conference to meet with other special rapporteurs, representatives and members of working groups of the Commission on Human Rights for an exchange of views and a discussion on issues of common interest, and to present a common declaration to the plenary of the Conference, the Special Rapporteur regrets that it was not possible to present these concerns before the drafting committee for the Vienna Declaration and Programme of Action. The scant attention given to the problem of violations of the right to life in that document is disappointing. The Special Rapporteur feels that the scale and gravity of extrajudicial, summary or arbitrary executions in many parts of the world would have justified a special heading in the Programme of Action.

F. Prevention

729. During his visits to the former Yugoslavia, Rwanda and Peru, the Special Rapporteur could clearly recognize the enormous, and irreparable, loss of lives in armed conflicts and other situations of internal violence. By establishing the facts and trying to determine the causes for such violence in these countries, it may be possible to discern ways of reducing the extent of violations of the right to life there and preventing their occurrence in other situations. In this context, it is most important to learn to notice signs of incipient conflict situations that may, if allowed to develop, degenerate into humanitarian and human rights crises with very severe consequences. All internal mechanisms for the peaceful solution of such conflicts at the earliest stage should be strengthened. When a country tries to enact such mechanisms, or where there exists a grave humanitarian or human rights crisis, the international community should make every effort to assist with a view to re-establishing peace and preventing a new crisis. Wherever this entails an international peace-building or peace-keeping operation, human rights should be a central component.

730. In all situations, whether armed conflict or not, the main question to be addressed with a view to prevention of violations of the right to life is the treatment of their authors: impunity is the key to the perpetuation of human rights violations, including extrajudicial, summary or arbitrary executions. Putting an end to impunity requires a genuine will to recognize and enact the safeguards and guarantees for the protection of the right to life of every person. The Special Rapporteur calls once again on all Governments to comply with their obligation under international law to investigate all instances of alleged violations of the right to life, to prosecute and punish their perpetrators and to grant adequate compensation to the victims or their

families. The Special Rapporteur also appeals to the international community to continue and reinforce its efforts to curb the phenomenon of extrajudicial, summary or arbitrary executions by putting into practice the international standards already existing, as well as improving them where shortcomings are identified. Finally, the Special Rapporteur reiterates his readiness to provide his full collaboration and assistance in this cause of common concern.

Notes

1/ A/37/40, annex V, general comment 16 (6), para. 6.

2/ For example, in resolutions 2857 (XXVI), 2393 (XXIII) and 39/118.

3/ A/37/40, annex V, general comment 6 (16), para. 7.

II. Conclusions by the Special Rapporteur on the use of mercenaries as a means of impeding the exercise of the right of peoples to self-determination (E/CN.4/1994/23, paras. 114-146)

114. The United Nations considers mercenary activities unlawful and criminal, as mercenaries have been used to commit acts contrary to international law, thereby creating situations that impede self-determination and endanger the sovereignty, constitutional stability and human rights of the peoples who become victims of this criminal activity. In this context, international instruments have been adopted which condemn and punish the recruitment, training, financing and use of mercenaries. At the same time, a growing number of States have included mercenarism as a punishable offence in their national legislation.

115. The condemnation of mercenarism is a universally accepted fact, even in those States which have not yet categorized it as a crime. At this point, the debate tends to focus on the scope and content of this punishable act, but not on its criminal nature. Moreover, without prejudice to the further development of international legal instruments and of the provisions of national law, Member States have sufficient capacity to formulate policies on the prevention, prosecution and punishment of mercenary activities, to prevent their territory from being used for the training or transit of mercenaries, and to prevent their financial and economic systems from facilitating operations which finance such activities.

116. The assumption that mercenary activities are on the decline - owing to the adoption of legal provisions for their prosecution and punishment and the fact that the decolonization process in Africa is over - bears no relation to contemporary reality. In recent years, and particularly since 1992, a greater number of criminal actions by mercenaries, both in Africa and on other continents, have been referred to the Special Rapporteur, thus confirming a growing trend towards recourse to the use of mercenaries for various unlawful activities that affect the self-determination of peoples and human rights. These unlawful actions also demonstrate that the growth can be attributed to the outbreak of new armed conflicts in the post-cold-war era with the establishment of new States. The fact is that the current international transition is being marred not only by border problems between recently established States, but also by a climate of acute ethnic, religious and nationalist intolerance which, in more than one case, has degenerated into armed conflict. Some of these conflicts have been aggravated by the involvement of foreign mercenaries.

117. In the analysis of mercenary activities, responsibility does not end with the commission of the criminal act or with the identification and isolation of the agent. The mercenary has been determined to be merely the last link in a chain, in which his recruitment and his subsequent commission of the criminal act are but the execution of an act which has been conceived, planned, organized, financed and supervised by others, whether they are private groups, political opposition organizations, groups which advocate national, ethnic or religious intolerance, clandestine organizations, or Governments which, through covert operations, decide on illegal action against a State or against the life, liberty, physical integrity and safety of persons, and involve mercenaries in that action. Accordingly, responsibility

extends to all those who take part in the criminal act, which, in its final phase, is executed by the mercenary agent. This therefore leads to the conclusion that vigilance, control and express prohibition provided for by Member States in their domestic legislation are very important in order to prevent organizations which generate mercenary activities from operating in their territory and, where necessary, to counter any intelligence machinery that, through covert operations, permits the involvement of government agents who recruit mercenaries or do so through third organizations, by prescribing harsh punishment for such unlawful contractual relationships.

118. In addition to the general observations made above, it can be said that mercenaries are most frequently recruited to commit acts of sabotage against a third country, to carry out selective assassinations of eminent persons, and to participate in armed conflicts. It therefore follows that a mercenary is a criminal who, without prejudice to the punishment applicable to those who recruited and paid him, must be severely punished, in keeping with the categorization of the common crime he has committed, where national law does not envisage the crime of mercenarism as such. In any case, the person's mercenary role should be considered as an aggravating factor.

119. Based on the information gathered on mercenaries participating in the most recent domestic or international armed conflicts, all Member States should be concerned that the increase in the supply of mercenaries might be influenced by the existence of career military personnel whose personal situation has deteriorated as a result of the reduction in strength or dissolution of the regular armed forces to which they belonged and who have consequently joined the ranks of the unpaid. There would thus appear to be persons with experience or military training who see in any armed conflict an opportunity to become involved in exchange for pay and are shown tolerance when they commit cruel acts or engage in looting, which brings them additional financial gain.

120. In the light of these new forms of mercenary activity, the Special Rapporteur concludes that there are cases in which legal formulas, or more specifically, standard legal procedures are resorted to in order to conceal a mercenary. He may thus appear to have the legal status of a national of the country where he becomes involved in an armed conflict, or where he will fulfil his criminal assignment, thereby avoiding categorization as a "mercenary". Although this approach legally masks an individual's real mercenary role, the origin of the contractual relationship, the payment he receives, the type of services agreed on, the simultaneous use of other nationalities and passports, etc., must be seen as indications of the true nationality of persons where there are strong grounds for suspecting that they are mercenaries. In this respect, problems arise in relation to persons who legally have dual or multiple nationality and whose acts are deliberately designed to bring criminal harm to one of the countries of which they are a national, on instructions from the other country of which they are a national, from a third State, or from groups organized to perpetrate acts of aggression.

121. Although mercenaries are most commonly hired to participate in armed conflicts, the fact that they are also hired to commit acts of provocation, aimed at fomenting an armed conflict or the destabilization of a lawful constitutional Government, should not be overlooked. Moreover, as the

mercenary is a criminal agent, it is not unusual for him to be connected with arms or drug-trafficking rings and terrorist groups, which are a threat to a country's laws and security. Nor is it unusual for these illegal groups to exchange identities; a terrorist group might also be said to be composed of mercenaries when it moves to the territory of another State in order to provide protection to drug traffickers in exchange for payment, engage in sabotage and other unlawful acts, or take part in a domestic armed conflict.

122. The sum total of these acts defines the scope and magnitude of mercenary activity as one of the crimes that most seriously harm the self-determination of peoples, constitutional stability, peace and human rights. This therefore highlights the importance of the General Assembly resolution adopted in December 1993 which recommends convening a group of experts, specialists and interested persons who could contribute to the further development of the concepts, categories, studies and proposed solutions contained in the reports which the Special Rapporteur on the question of the use of mercenaries has submitted to both the Commission on Human Rights and the General Assembly itself.

123. The information gathered confirms that during 1993 Africa was still the continent which suffered most from mercenary aggression. In this connection, it should be recalled that the concept of a mercenary, as construed today, took as its point of departure the presence of professionals of war, most of them white, who were active in bloody armed conflicts in various regions of Africa in order to prevent the exercise of the right to self-determination, independence and the formation of sovereign African States, and to form territorial enclaves subordinate to former colonial Powers or to instal Governments subordinate to them or to colonialist ventures. In so far as some of these conflicts have been settled, mercenary activities can be said to have subsided. But they have not disappeared completely. Angola, Benin, Botswana, the Comoros, Lesotho, Liberia, Mozambique, Namibia, Zaire, Zambia and Zimbabwe, inter alia, are countries with recent experience of mercenary activity; and in certain cases, outside the region of southern Africa, mercenary attacks have occurred as a result of the policy of apartheid which originated in South Africa but has ramifications and has sparked criminal activities all over Africa and even outside it.

124. The situation in Angola steadily deteriorated and became more serious in 1993 with the failure of the peace agreements signed on 31 May 1991 and the resumption of hostilities by UNITA against the Government of Angola. The information obtained indicates that the impact of this war on the Angolan people is even worse than it had been up until 1991. Their living conditions have deteriorated to such an extent that starvation is widespread, the number of deaths is estimated at over 1,000 a day and at approximately 500,000 in 1993 as a result of armed conflicts, acts of sabotage, food shortages, infection and the lack of medicines and prompt medical attention in hospitals. United Nations efforts to reduce the suffering of the Angolan people and to end the conflict have not been successful thus far. Hence the importance of Security Council resolution 864 (1993), unanimously adopted on 15 September 1993 pursuant to Chapter VII of the Charter of the United Nations, declaring an embargo on the supply of arms, related matériel and petroleum to UNITA forces. This embargo took effect on 26 September and is expected to put an end to the purchase of weapons, sophisticated military

training abroad and the presence of military technicians and strategists, all of which have served to intensify the war and have, at the same time, made it difficult to end it through negotiation. None the less, it should be noted that in early December 1993 UNITA announced its willingness to negotiate a truce and reopen a dialogue with the Government.

125. On the basis of all the information gathered, the Special Rapporteur has concluded, with regard to the aggravation of this armed conflict, that the presence of foreign mercenaries who have participated in training operations and in combat has been a key factor in the duration and nature of the conflict. Reports from government sources indicate that most of the mercenaries are of South African and Zairian origin. The reports also mention the recruitment of former members of the South African 31st and 32nd battalions as security guards for Angolan oil refineries and installations, who, however, allegedly fought in Huambo alongside UNITA forces. Their recruitment is attributed to a South African company, Executive Outcome. Moreover, UNITA control of Angola's eastern provinces allegedly facilitated the entry into Angola of mercenaries from Zaire to fight alongside rebel forces. In addition, the head of the South African Defence Forces, General Georg Meiring, confirmed on 11 September 1993 that members of the special élite forces and former members of the South African intelligence services were receiving offers of recruitment to fight in Angola as mercenaries. They were being offered one-year contracts and monthly pay of US$ 10,000. Although from all indications, UNITA is responsible for the use of mercenaries, the Special Rapporteur notes that recent international press reports name the Angolan Government as well in connection with the acceptance of mercenaries of South African origin to act as military instructors in the army, and some of them have taken part in military operations against UNITA. The Special Rapporteur has contacted the Angolan Government in order to transmit this information to it and seek its views.

126. In relation to the mercenary activities generated in South Africa within the context of the policy of apartheid, whose backdrop has been both South Africa, other countries of the region and even countries outside Africa, the information contained in the report demonstrates that such mercenary activities have substantially abated with the progressive dismantling of apartheid. The most recent development has been the adoption of a provisional constitution that repeals the laws of apartheid and steers South Africa towards a pluralistic democracy free from racial, political, social and cultural discrimination. This development cannot, however, obscure or minimize the existence of extremely violent groups totally opposed to the dismantling of apartheid. Among the various acts of provocation by such groups was the assassination on 10 April 1993 of Chris Hani, a member of the ANC National Executive, at the hands of a Polish mercenary called Janusz Walus. In view of this situation, which has persisted since December 1993, we maintain that while substantial progress has been achieved in the democratization of South Africa, the process is being resisted by groups that advocate an escalation of violence and are prepared to resort to crime and terrorist activities and actions, hiring known mercenaries for this purpose.

127. The report contains a brief account of the problems caused by political violence in Zaire (paras. 55-60). All the information gathered points to the participation of foreign mercenaries in acts of violence which are endangering the lives of the Zairian people. These mercenaries have participated in the formation and training of a Civil Guard brigade known as the Special Intervention Force (FIS); mercenaries of Egyptian, Israeli and South African origin have also allegedly acted as instructors in the Special Presidential Division and in some élite army units.

128. For the second consecutive year, the Special Rapporteur is focusing attention on the armed conflicts taking place in the territory of the former Yugoslavia as part of his substantive mandate. He has again received reports - some from the States affected by the conflict - of the presence of foreign mercenaries involved in that conflict. Details of these reports are contained in paragraphs 61-71 of the report and the correspondence, which sets forth the serious charges levelled in connection with the presence of mercenaries, is contained in the files of the Special Procedures Unit of the Centre for Human Rights. It follows from a study of these facts that the presence of foreigners in this conflict is admitted by all parties, although whether some or all of them are mercenaries is in dispute. The Special Rapporteur has requested replies to these charges and reported on the steps taken to the Special Rapporteur appointed by the Commission to investigate the human rights situation in the territory of the former Yugoslavia.

129. Although the armed conflict is continuing, the various rounds of political negotiations between the parties are keeping alive hopes of reaching an agreement that will end a war which has been marked by extreme violence and cruelty. However, even assuming that the urgently needed peace agreement is reached, the crimes that have been committed are so serious that the Special Rapporteur believes that their investigation should not be halted. Where mercenaries are known to have participated in such crimes, this should be considered an aggravating factor in the imposition of penalties.

130. Following the breakup of the former Union of Soviet Socialist Republics, the republics which previously formed part of that State have become sovereign and independent States, with the majority of them making up the Commonwealth of Independent States (CIS). Disputes of various sorts have arisen in a number of those countries, some relating to border issues, others to internal relations between territories and republics and their autonomy with respect to the new State. But the disputes which have degenerated into armed conflict are mainly those which involve some ethnic element and strong nationalist or religious feeling, acting as catalysts in the choice between greater autonomy, territorial redistribution involving a move from one State to another or a change in the nature of the political regime. In every case where the deadlock has turned into armed conflict, there has been participation by mercenaries, according to the information analysed by the Special Rapporteur.

131. Paragraphs 72-103 of the report provide information on the armed conflicts taking place in Armenia and Azerbaijan (Nagorny-Karabakh), Georgia, the Republic of Moldova and Tajikistan, including official correspondence sent to the Special Rapporteur reporting the presence of foreign mercenaries who have been recruited to participate actively in military operations. With the exception of Armenia and Azerbaijan, these conflicts have abated. When the

conflict between Georgia and Abkhazia was at its height, foreign mercenaries were involved, according to the claim made by President Shevardnadze himself, speaking before the Georgian Parliament in Tbilisi on 16 March 1993. Similarly, in the case of the Republic of Moldova, the communication dated 23 August 1993 sent to the Special Rapporteur by the Deputy Minister for Foreign Affairs of Moldova is confirmed by the report on the participation of Russian and Cossack citizens as mercenaries in the armed conflict which broke out in the area of the Moldovan Dniester; this report even gives an account of nine persons from the Russian Federation who were arrested for participating in the conflict. The incidents described would appear to demonstrate that a number of foreigners have indeed participated in the armed conflicts which took place in some of the States formerly making up the Soviet Union. The investigation being conducted by the Special Rapporteur is not closed and it is expected that, with the cooperation of the authorities of each State and international sources, and through the work of NGOs, he will be able to provide the Commission with a more detailed report on this sensitive question.

132. With regard to the current status of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, the Special Rapporteur notes that to date only seven States have completed the process for becoming parties to the Convention (Barbados, Cyprus, Maldives, Seychelles, Suriname, Togo and Ukraine), and that a further 13 States have signed it. This situation has prompted the conclusion that there is a delay in the process by which Member States express consent to be bound by the Convention through ratification or accession, for until 22 States have ratified or acceded to it, the Convention cannot enter into force.

133. In accordance with resolution 1993/48 of the Commission on Human Rights, the Special Rapporteur has focused on the adverse consequences for the enjoyment of human rights of acts of violence committed by armed groups that spread terror among the population and by drug traffickers. From the reports and communications on file in the Centre for Human Rights and the supporting documentation, it has been learned that in the course of 1993 populations of various countries have been seriously harmed by the illegal and criminal action of armed groups which, regardless of their ideological motive, have not hesitated to engage in utterly reprehensible conduct, such as massive violation of human rights, attacks on public safety, and acts designed to disrupt the constitutional order and destabilize constitutional governments. These terrorist practices, perpetrated in order to create a general climate of intimidation and terror, have been committed by armed groups on political pretexts, by drug-trafficking rings or by mercenaries. In more than one case, they have joined forces and exchanged favours, forming criminal associations that seriously endanger human life, the safety and integrity of individuals, and the human rights of whole populations.

IX. RECOMMENDATIONS

134. The Special Rapporteur, in view of the reports he has received during 1993, confirming that mercenary activities have not subsided and are giving rise to situations that violate the human rights and impede the self-determination of peoples, and taking into account the United Nations declarations and resolutions condemning such activities as serious crimes which give all States cause for profound concern, recommends to the Commission

on Human Rights that, taking into account the fact that these acts are being repeated and the precedents deriving from the position taken on this issue, it should reaffirm its condemnation of mercenary activities of any type or form and at any level, and of States or third parties involved in them. He further stresses the need to strengthen the principles of the sovereignty, equality and independence of States, the self-determination of peoples, full respect for human rights and the stability of constitutionally established and lawfully functioning Governments, and full enjoyment of human rights.

135. Bearing in mind that recourse to mercenaries is aimed at doing harm, whose victim may be a person singled out for his ideas, belief, race or political position, an institution within society, political figures or eminent persons holding public office, or a State, and that mercenary action takes place chiefly, but not exclusively, in the context of armed conflict, as mercenary operations have also been staged where there was no armed conflict, it is recommended that the Commission should stress that the use of mercenaries in itself and their use for unlawful activities are to be condemned, both in cases where such activities are carried out by one or all parties to an armed conflict and in cases where there is no armed conflict, and mercenaries are resorted to for purposes of impeding the self-determination of a people, damaging a country's installations, destabilizing the constitutional Government of a State or endangering the life and safety of persons.

136. Bearing in mind the nature and forms of mercenary activities and that they generally make the mercenary an instrument, since his recruitment and his subsequent commission of the criminal act are but the execution of an operation which has been conceived, planned, organized, financed and supervised by others, the Special Rapporteur recommends that the resolution condemning mercenary activities also stress the need for vigilance and explicit prohibition in the domestic legislation of member States in order to prevent organizations linked to mercenaries from operating in their territory, to prohibit public authorities from resorting to mercenarism and to counter any intelligence machinery which through covert operations uses mercenaries or does so through third organizations. The scope of this recommendation should include the prohibition of the transit of mercenaries through national territory and, of course, punishment of nationals or foreign residents who engage in mercenary activities.

137. Given the complex techniques employed to conceal and alter the identity of mercenaries, the oversupply of career military personnel who are tempted to become mercenaries and the use of legal devices and standard legal procedures to disguise the mercenary's legal status and nationality, or cases of simultaneous dual or multiple nationality, it is recommended that the Commission should consider the views of the General Assembly contained in its recent resolution on the subject adopted in December 1993, under the section calling for a meeting of a group of experts, specialists and interested persons, so that, together with the Special Rapporteur and taking into account the categories of analysis used by him, significant headway may be made in refining and determining the scope of the concepts relating to the question of mercenaries and in proposing solutions aimed at significantly controlling the problem.

138. Africa is still the continent most affected by mercenary activities, which persist in certain conflicts in the region and continue to pose a latent threat to other African countries. It is therefore recommended that the Commission should reaffirm its strong condemnation of the presence of mercenaries and of those States and third parties which promote mercenary activities in Africa, and its unqualified support for the self-determination and development of the African peoples, and the full enjoyment of their human rights. It should also express its support for the measures taken, in accordance with international and domestic law, in the case of countries affected by the presence of mercenaries.

139. In monitoring cases of armed conflict in African countries where mercenaries were involved, it has been determined that they redeploy when cease-fire and peace agreements are concluded; however, the main units which are usually made up of mercenaries from other continents or from South Africa, do not leave Africa but rather move on to other African countries, from which they maintain their ties with organizations that traffic in conflict situations and with paramilitary groups, all of which helps them to become mercenaries again in the country where they have taken refuge or in other countries where a situation of violence exists. It is therefore recommended that the Commission should suggest that, in addition to the prohibition of mercenary activities and the applicable penalties, measures be agreed upon to expel from African countries all persons of foreign nationality who have served as mercenaries in armed conflicts or in support of apartheid, whether or not they have served sentences. Nationals who have participated in mercenary activities should also be liable to provisions in the respective legal system of each country which establish penalties of the greatest severity for recidivism.

140. Taking into account the escalation of the armed conflict in Angola in 1993, it is recommended that the Commission on Human Rights should draw attention to the grave prejudice that the prolongation of the conflict represents for the Angolan people and for the respect and enjoyment of their human rights. At the same time, it should stress the need to put an end to the conflict, within the framework of the peace agreements and initiatives contained in the relevant United Nations and OAU resolutions. The recommendation should also mention the need for strong condemnation of the presence of mercenaries who have become involved in the armed conflict in Angolan territory or from neighbouring countries.

141. On the basis of the positive developments in the political situation in South Africa, where the adoption of a new provisional constitution, a transition government leading to democracy and general, pluralistic elections in April 1994 are effectively dismantling apartheid, but also taking into account the resistance of white-minority groups who will resort to armed violence in order to prevent the abolition of the racist system and, in that context, to the use of mercenaries, active, vigilant support is recommended for all measures to eliminate apartheid and introduce democracy in South Africa, to report and at the same time condemn acts of violence that are encouraged to prevent or delay this process, and to hold the racist minority groups responsible for using mercenaries and committing acts of violence in order to obstruct the democratization process in South Africa.

142. Concerning Zaire, where the use of mercenaries has been yet another sign of a deteriorating political situation, it is recommended that that practice be condemned and that a warning be issued to the Zairian Government and to all parties to the conflict that they must cease attacks on the civilian population and refrain from the use of mercenaries, and that they will be punished, expelled from Zaire and banned from re-entering the country if evidence of their participation in criminal acts is uncovered.

143. Bearing in mind that armed conflicts continued in the territory of the former Federal Republic of Yugoslavia during 1993, and that there is also evidence of the presence of mercenaries who participated in grave human rights violations, it is recommended that the Commission should include in all the resolutions it adopts in this connection the condemnation of the recruitment and use of mercenaries by any of the parties to the conflict and, at the same time, that the evidence gathered on the participation of mercenaries in criminal acts be used to initiate the processes of investigation and judicial punishment for the commission of such criminal acts.

144. Concerning the armed conflicts which have broken out in some of the States members of the former Union of Soviet Socialist Republics, it is recommended that, in addition to the national and international initiatives for peace and friendship in this vast region, the Commission should expressly condemn the use of mercenaries by any of the parties to the armed conflicts which are still continuing and in those which are over or partially over. The recommendation should also contain an appeal to all States of the region to strengthen their criminal legislation by expressly prescribing punishment for mercenary activities and to impose penalties on anyone who has been acting as a mercenary either individually or by forming an irregular group.

145. With regard to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, the Special Rapporteur recommends that it should be suggested to those States which have not yet ratified it or signalled their intention to accede to it that they consider the advisability of speeding up this process, which would contribute to more effective action by the international community against mercenary activities.

146. Lastly, and taking into account the previous resolutions of the Commission on Human Rights which have focused on the adverse consequences for the enjoyment of human rights of acts of violence committed by armed groups that spread terror among the population and by drug traffickers, it is recommended that the language condemning such activities be reaffirmed and strengthened, and that the Commission also draw attention to the need for more effective action in domestic and international efforts to combat these groups, which violate human rights. The Special Rapporteur recommends that the Commission should further consider the advisability of appointing a working group for the systematic evaluation of reports and communications on acts of violence committed by these armed groups, which spread terror among the population, and by drug traffickers, with adverse effects for the enjoyment of human rights. This working group could also be composed of the Commission's current special rapporteurs who are fulfilling thematic mandates.

III. Conclusions and recommendations by the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1994/26, paras. 532-540)

IV. CONCLUSIONS AND RECOMMENDATIONS

532. Since the Working Group was established, 13 years ago, one event stands out as the single most encouraging achievement in combating disappearances worldwide: the adoption by the General Assembly of the Declaration on the Protection of All Persons from Enforced Disappearance. By proclaiming the Declaration, on 18 December 1992, the international community, more clearly than ever before, expressed its commitment to put an end to perhaps the most comprehensive and pernicious way of violating human rights. Comprehensive, since making people disappear amounts to infringing upon a variety of human rights, including, as the Declaration points out, the right to life, the right to liberty and security of the person and the right not to be subjected to torture. Pernicious, since a disappearance places the victim outside the protection of the law, as the preamble phrases it. Enforced disappearance "undermines the deepest values of any society committed to respect for the rule of law, human rights and fundamental freedoms", the preamble continues. The most striking expression, however, of how the General Assembly views the phenomenon is the stipulation in the Declaration that the systematic practice of disappearance "is of the nature of a crime against humanity".

533. The past year has shown that the policy and practice of many States run counter to the Declaration. While disappearances continue to be reported to the United Nations, many Governments have not shown any determination to reflect the provisions of the Declaration in their national legislation. In this context, reference may be made to article 4, which provides that "all acts of enforced disappearance shall be offences under the criminal law"; to article 17, positing that such acts "shall be considered a continuing offence"; and to article 18, that perpetrators "shall not benefit from any special amnesty law".

534. There is every reason for the international community to remain alert, for the phenomenon of disappearances is still rampant. In 1993, over 3,000 cases of enforced disappearance throughout the world were transmitted by the Working Group to a total of 30 Governments. It should be noted, however, that of the cases so transmitted, only 118 were reported as having occurred in 1993. In comparison, during the previous year, 8,000 cases were transmitted to 59 Governments, of which 353 cases were reported to have taken place in 1992. Doubtless, it would be an error to conclude that disappearances worldwide have diminished by more than 50 per cent. The numbers quoted, as the Working Group has stated time and again, do not necessarily reflect the actual incidence of the phenomenon, since the United Nations is dependent on external sources for information on individual cases. The Working Group estimates that the real number of disappearances is higher. Progress in dealing with the problem has not been such that attention could instead be directed to other forms of violation, perceived as more pressing.

535. The growing commitment of the United Nations to peace-making is of relevance to the Working Group's mandate as well. Some of these operations, such as the ones in Cambodia and El Salvador, have contained a strong human

rights verification component. Thus, depending on the situation concerned, such operations may enhance greater respect for human rights. In El Salvador, for example, no more cases of enforced disappearance are being reported. Wherever appropriate, the United Nations should incorporate such a component in the mandate of such operations.

536. Of course, in certain situations the difficulties are overwhelming. The situation in Yugoslavia is a case in point. It stands out as an armed conflict of dramatic proportions and has caused thousands of cases of disappearance. Consequently, the Working Group has followed developments in the region with great concern. The fact is, however, that the Working Group's methods of work were not designed to handle situations of the size and nature the world is witnessing in the former Yugoslavia. It was for this reason that the Working Group, in its report last year, drew special attention to the question of how cases of disappearance from that area should be dealt with by the United Nations. At the request of the Special Rapporteur on the situation of human rights in the former Yugoslavia, one of the Group's members carried out a mission to parts of the territory of the former Yugoslavia. On the basis of the report on the mission, and following consultations with the Special Rapporteur and the International Committee of the Red Cross, the Working Group has decided to propose to the Special Rapporteur the establishment of a special procedure by the Commission on Human Rights. All cases of missing persons in any part of the former Yugoslavia should be considered under this "special process", regardless of whether the victim is a non-combatant civilian or a combatant, and irrespective of whether the perpetrators are connected to the Government or not. This special procedure should be implemented as a joint mandate by one member of the Working Group acting in his individual capacity and the Special Rapporteur on the situation of human rights in the former Yugoslavia, resulting in their submission of joint reports to the Commission on Human Rights.

537. One of the problems encountered in the former Yugoslavia as regards clarifying cases of missing persons concerns clandestine mass graves. This aspect prompts the Working Group to draw the Commission's attention once again to the wider question of exhumation and identification of possible victims of human rights violations, an important element in the investigation of cases of disappearance in any part of the world. The Working Group has found that in some situations local authorities cooperate with international forensic scientists and implement the standards internationally accepted for this purpose. But it is a matter of concern that in many other situations independent forensic teams are not only denied cooperation but are intimidated and subjected to reprisal. Needless to say, such situations are intolerable.

538. In connection with the relevance of forensic sciences to the clarification of disappearances, the Working Group continued its contacts with relevant professional organizations. It brought the results of these contacts to the attention of the Secretary-General, pursuant to Commission resolution 1993/33. The Group welcomes establishment by the Secretary-General of a list of forensic experts and experts in related disciplines. Such experts, it is envisaged, can be requested to help in providing technical and advisory services in this field. They can also be of use to international human rights mechanisms, Governments and the Centre for Human Rights in other activities, such as monitoring and training local investigative teams.

539. As a final observation of a more general nature, the Working Group is pleased to note that more and more people, government officials as well as human rights activists, are becoming increasingly aware of the Group's attempts to achieve positive results in its humanitarian work. Cooperation with most Governments is improving. Nevertheless, the following Governments have failed to extend a minimum of cooperation, for they have not sent even a single reply to the Working Group's communications, despite having received at least one reminder, and in most cases several reminders: Afghanistan, Angola, Bulgaria, Burkina Faso, Burundi, Guinea, Mauritania, Rwanda and Mozambique. The Commission should consider drawing the attention of these Governments to their obligations.

540. The Working Group remains concerned at the continuing problem of the inadequacy of resources placed at its disposal for the fulfilment of its task. Indeed, the staff servicing the Group was further reduced in 1993 owing to the increase in Special Procedures mandates by the Commission on Human Rights, for which almost no additional human resources were made available and which therefore had to be, to a large extent, accommodated within existing resources. The unfortunate consequence of this situation is that a backlog of some 8,000 cases is being carried over to the year 1994. This number does not include the 11,103 cases that have so far been received from the former Yugoslavia and which the Group estimated to constitute only a portion of the actual number of cases that will be reported in the months to come. The Group has made extensive reference to all the negative consequences this situation entails in the conclusions to its previous report (E/CN.4/1993/25, paras. 522-523). At this juncture it wishes to appeal once again to the Commission as its parent body, as well as to its members individually, to take every possible measure which would increase the staff support which the Working Group urgently requires to carry out its mandate effectively.

IV. Conclusions and recommendations by the Working Group on Arbitrary Detention (E/CN.4/1994/27, paras. 31-77)

IV. CONCLUSIONS AND RECOMMENDATIONS

A. General conclusions

31. In response to various concerns of the Commission, the Working Group has considered it necessary to refer in this its third report to all the resolutions adopted at the forty-ninth session that have a direct or indirect bearing on its mandate. Similarly, in different sections below the Group will discuss its revised methods of work, the possibility of field missions and the Group's general concerns.

1. Response to concerns of the Commission

32. Many Commission resolutions call on special rapporteurs and working groups in general, and on this Working Group in particular, to give "special attention" to the matters contained in the resolutions mentioned below.

Resolution 1993/41, on human rights in the administration of justice

33. In the Working Group's view, this question is closely connected with its own mandate, as shown in particular by the consideration of all the cases of detention referred to in "category III" of the Principles applicable in the consideration of cases submitted to the Group (first report (E/CN.4/1992/20, annex I)), which relate to guarantees of due process and an impartial trial. In the decisions adopted during the period under review, it was found in 82 cases that detention was arbitrary because of non-observance of these provisions.

34. Also in relation to this question, the Working Group once again draws the Commission's attention to the operation of special courts or military courts. As to the former category, it has found in some of its decisions cases involving "revolutionary" or "people's" courts. The impression gained from these cases is that they are courts based on an ideology which is customarily incompatible with the guarantees provided for in the international provisions to which the Group, in the discharge of its mandate, is compelled to refer.

35. As to the second category, "military courts", the Working Group shares the view of the Human Rights Committee that the provisions of article 14 of the International Covenant on Civil and Political Rights apply to all kinds of courts, whether ordinary or emergency courts. Undoubtedly, the Covenant does not prohibit military courts, even when they try civilians, but conditions reveal no less clearly that trials of civilians by such courts must be exceptional and must be held under conditions of full respect for all the guarantees set out in article 14. In this very connection, the Commission on Human Rights, in resolution 1993/69, called on the Government of Equatorial Guinea to put an end to the use of military courts to try ordinary law offences. The Working Group shares the view of both the Commission and the Human Rights Committee and therefore considers that, in terms of principles, the name given to a special court is less important than whether or not it meets the requirements of article 14 of the Covenant. In the light

of its experience, the Group notes that in almost all cases military courts involve serious risks of arbitrariness, on the one hand because of the procedure applicable and on the other because of the corporative nature of their membership, and all too often they give the impression that a double standard is being applied, depending on whether the person being tried is a civilian or a member of the military.

36. In paragraph 43 (c) of its second report (E/CN.4/1993/24), the Working Group recommended the strengthening of the institution of habeas corpus, which, as experience shows, is indispensable in a State governed by the rule of law as a safeguard against arbitrary detention. The Commission endorsed this suggestion (resolution 1993/36, para. 16). The Group regrets that in many countries habeas corpus actions do not exist or have been suspended or are not readily available or relied on very little, since the sources very rarely indicate that this remedy has been applied for, although this step is required in the Working Group's principles for the submission of cases.

Resolution 1993/45, on the right to freedom of opinion and expression

37. This resolution is in keeping with the contents of paragraph 14 of resolution 1993/36. In its second report, the Working Group had already expressed a similar concern and it may be noted that 38 of the decisions adopted, concerning 147 persons, relate to detentions regarded as arbitrary because they were ordered as a result of lawful exercise of the right to the freedom provided for in article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights. Unfortunately, because of the very short period since the establishment of the mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression referred to in paragraph 11 of resolution 1993/45, it has not been possible to coordinate with him more effectively.

Resolution 1993/46, on integrating the rights of women into the human rights mechanisms of the United Nations

38. Pursuant to this resolution, and to the provisions of paragraph 10 of resolution 1993/47, the statistics for this year show cases of arbitrary detention in which the victims were women. If the Commission decides to appoint a special rapporteur on violence against women, as envisaged in paragraph 6 of resolution 1993/46, the Group hopes to be able to cooperate with him or her in the most effective way.

Resolution 1993/47, on human rights and thematic procedures

39. This resolution covers various matters of interest, many of them dealt with in various paragraphs of this report, and in particular the following:

(a) List of recommendations. The Group considers that the complete annual list of general recommendations which the resolution requests from the Secretary-General should, as far as the Working Group is concerned, include the principles applicable in the consideration of cases submitted to the Working Group and its revised methods of work;

(b) Follow-up to recommendations. Paragraph 5 of resolution 1993/47 reveals the Commission's concern about the follow-up by Governments to the recommendations contained in the decisions of the Special Rapporteur or the Working Group, something which is a subject of a special recommendation in paragraph 10 of resolution 1993/36. This is the concern that also prompted the Working Group to suggest the consideration in 1993 of "improved methods of work by means of continued cooperation with Governments, so as to ensure follow-up to the recommendations made in the Group's decisions" (E/CN.4/1993/24, para. 42 (b)). For this reason, and in view of the Commission's requests in resolutions 1993/36 and 1993/47, the Working Group, through its Chairman/Rapporteur, will engage in appropriate consultations so as to suggest to the Commission at its next session, in the form of a "deliberation", a follow-up mechanism for its decisions.

Resolution 1993/48, on the consequences for the enjoyment of human rights of acts of violence committed by armed groups that spread terror among the population and by drug traffickers

40. The Commission requests special rapporteurs and working groups to continue to pay particular attention in their reports to these negative consequences. The Working Group is, of course, particularly concerned about the adverse effect that the activity of the criminal groups in question has on the effective enjoyment of human rights. Their actions especially affect the rights to life, security of person, freedom of association and assembly, freedom of opinion and expression, and even freedom of conscience. Moreover, justified fear of their actions has caused thousands of persons to go into exile, thus affecting their right to live in their own country. Of course, personal freedom is also affected, since hundreds of people are being kidnapped. The Working Group's mandate is, however, limited to cases of "detention imposed arbitrarily or otherwise inconsistently with the relevant international standards set forth in the Universal Declaration of Human Rights or in the relevant international legal instruments accepted by the States concerned" (resolution 1991/42). With regard to the content of this mandate, the Working Group adopted its Deliberations 02 and 03, which are contained in chapter II of its second report (E/CN.4/1993/24) and clearly show that the term "detention" refers to an act of the State which deprives a person of his freedom.

41. However, when acts depriving persons of their freedom are carried out by non-State or even private organized movements which use armed struggle in their political action, chiefly in circumstances governed by international humanitarian law, the Group will need to look into an appropriate procedure. But in the present state of its thinking, the Group considers that the mandate relates solely to detentions ordered or practised by the State.

Resolution 1993/63, on the situation of human rights in Cuba, resolution 1993/97, on the situation in East Timor, and resolution 1993/61, on the situation of human rights in Zaire

42. As in previous years, the Working Group has endeavoured to maintain contacts with all the rapporteurs and experts, as well as with the Secretary-General, in connection with the cases on which they have to report to the Commission on the human rights situation in the countries within their

mandates. In the relevant cases the Group has considered the background information available to the experts and rapporteurs and taken it into account in its decisions.

Resolution 1993/64, on cooperation with representatives of United Nations human rights bodies

43. This resolution deals specifically with the protection of persons who have lodged complaints with, availed of themselves of the procedures of, cooperated with or provided testimony to any body in the system. The Working Group has paid special attention to this resolution, to which it attaches the greatest importance. However, it has not received any reports of reprisals against persons complaining to the Group of their situation.

Resolution 1993/70, on human rights and mass exoduses

44. The proliferation of mass, unjust, and mainly, prolonged detentions, under inhuman and unsanitary prison conditions, is naturally a cause of mass exoduses. The Working Group endorses the view of the Commission when it said that human rights violations are one of the multiple and complex factors causing mass exoduses of refugees and displaced persons, recalled that the General Assembly strongly deplores ethnic and other forms of intolerance as one of the major causes of forced migratory movements and urged States to take all necessary steps to ensure respect for human rights, especially the rights of persons belonging to minorities. In this regard, the Working Group has learned over the past year of two situations that could be considered as falling within the framework of resolution 1993/70, namely the situation of Haitian asylum seekers being held at the United States Naval Base in Guantanamo, Cuba, (case mentioned in para. 15), already resolved by the Government of the United States of America, which informed the Group that all the persons had been released and the camp had been done away with; and also the situation of Vietnamese asylum seekers held in Hong Kong, on which the Group is to take a decision at its next session.

Resolution 1993/81, on the plight of street children

45. The Group cannot but stress its full support for the assumptions on which this resolution is based, since this is one of the most serious human rights problems at the present time. Nevertheless, and perhaps because the Working Group usually deals only with cases of prolonged detention, which is not normally the case with street children, no situations of this kind have been submitted to it.

Resolution 1993/87 (I), on advisory services and the Voluntary Fund for Technical Cooperation in the Field of Human Rights

46. In this resolution the Commission requested the Working Group to include in its recommendations, whenever appropriate, proposals for specific projects to be realized under the programme of advisory services. In accordance with this request, the Working Group is at the disposal of the Centre for Human Rights in cooperating with the heads of the advisory services, more especially in proposing projects after case studies or field missions or participating in missions initiated by the Centre.

2. Revised methods of work

47. In its report to the Commission at its forty-ninth session (E/CN.4/1993/24) the Working Group expressed regret that, according to its interpretation, it was not empowered to act on its own initiative in cases of detention it might regard as arbitrary (paras. 28 and 29). It was therefore a matter of particular satisfaction to the Working Group that the Commission, in paragraph 4 of resolution 1993/36, considered "that the Working Group, within the framework of its mandate, and aiming still at objectivity, could take up cases on its own initiative".

48. On the basis of this provision, the Working Group revised its methods of work, thereby also fulfilling the request contained in paragraph 5 of resolution 1993/36, and it incorporated in the text appearing as annex IV to the report contained in document E/CN.4/1993/24, the following paragraph:

> "17. In accordance with the provisions of paragraph 4 of resolution 1993/36, the Working Group may, on its own initiative, take up cases which, in the opinion of any one of its members, might constitute arbitrary detention. If the Group is in session, the decision to communicate the case to the Government concerned shall be taken at that session. Outside the session, the Chairman, or in his absence, the Vice-Chairman, may decide on transmittal of the case to the Government, provided at least three members of the Group so agree. When acting on its own initiative, the Working Group shall give preferential consideration to the thematic or geographical subjects to which the Commission on Human Rights has requested it to pay special attention."

49. In order to carry out the request contained in paragraph 9 of resolution 1993/47, moreover, the following paragraph has been added in connection with the methods of work:

> "18. The Working Group shall also communicate any decision it adopts to the Commission on Human Rights body, whether thematic or country-oriented, or to the body established by the appropriate treaty, for the purpose of proper coordination between all organs of the system." (See complete text of the methods of work, revised in December 1993, in annex I).

3. Missions

50. In resolution 1993/47, mentioned earlier, the Commission encourages Governments to invite special rapporteurs and working groups to visit their countries and to cooperate with them in their work. In resolution 1993/36, the Commission

> "Encourages Governments to consider inviting the Working Group to their countries so as to enable the Group to discharge its protection mandate even more effectively and also to make concrete recommendations concerning the promotion of human rights, in the spirit of the advisory or technical assistance services, that may be of help to the countries concerned."

In this regard, in its report to the Commission at its forty-ninth session the Working Group said that one of the considerations for 1993 was to carry out the first mission in situ (para. 42 (c)). Consultations are now being held with two countries, Viet Nam and China, to programme a mission consonant with its mandate (with regard to Viet Nam, see para. 16). In respect of China, the Working Group has considered several cases of alleged arbitrary detention which were reported to have occurred in that country. The decisions in respect thereof have not yet been communicated to the Government of China as the Group is of the opinion that, consistent with the spirit of cooperation in its functioning, it would be of immense value if the Government agreed to its request for a visit in order to understand better the concerns and viewpoint of China. Pursuant to contacts made by the Working Group, the Government has not yet indicated to the Group whether it intends to grant its request. The Group hopes that the Government of China will respond favourably, by the end of February 1994, failing which the Group would forthwith communicate its decisions to the Government.

51. As to resolution 1993/97, on the situation in East Timor, it should be noted that the Group regrets that so far it has not been invited to visit East Timor, but sincerely hopes that, consistent with the wish expressed by the Commission, and with its support, the Government of Indonesia will respond constructively.

4. General concerns of the Group

52. In the light of its experience, the Group's intention has been to contribute to the United Nations' constantly reiterated purpose of promoting and protecting the basic rights of all human beings. Arbitrary detentions are a permanent feature of all regimes, although more frequent and more serious in regimes of a repressive type. The Working Group thus considers that the lengthy process of concern by the Commission and by the Sub-Commission on Prevention of Discrimination and Protection of Minorities about arbitrary deprivations of freedom, which began in 1985 and led to the establishment of the Working Group and the formulation of its mandate in 1991, has been fully justified and that the reasons taken into account at that time are still fully valid.

53. The Group's mandate is of a special nature that calls for a thorough understanding by the Group of the relevant parts of all the national legislations applicable. In the Group's view the difficulties that have emerged have been solved.

54. The Group believes that its suggestion that consideration should be given in 1993 to better control over the flow and range of cases submitted for a decision, as well as an examination of the general trend in the use of arbitrary detention, has, so far as possible, largely been followed. During the year, 181 new cases have been submitted and, with the 162 cases on which a decision is pending, the total is 343. Of these, 269 have been the subject of a decision.

55. The Group has sought to comply with its mandate with discretion, objectivity and independence. The requirements of discretion and of independence have not been challenged. The Group's objectivity has been challenged on only two occasions, which cancel each other out because they are contradictory:

(a) In reply to a concern expressed by the Government of Cuba, the Group maintained in section C of "Deliberation 03" that failure to reply "does not ... imply a priori any presumption as to the veracity of the allegation made" if the Government has not cooperated;

(b) The American Association of Jurists, which the Group had the pleasure of hearing at its seventh session, stated that the Group adopted a presumption in favour of the State if the State cooperated with it, quoting five decisions which appeared in the Group's report on its second year of work. An analysis of those decisions shows that the Group did not presume that the Government's information was true; it decided on the only evidence available. The Group neither rewards a State which cooperates with the presumption of veracity nor punishes a Government that does not cooperate with a presumption of the veracity of the source's allegation. It decides only on the merits of the available evidence. With regard to 1993, the Working Group declared that the detention to be arbitrary in 88 cases, despite the fact that the Government had cooperated.

56. The Working Group welcomes the functional benefit of being able to use the adversarial procedure in taking its decisions. Nevertheless, it wishes to point to some of the difficulties that occur in receiving information from sources and in replies from Governments. The difficulties are as follows:

(a) With regard to information from sources:

Supply of insufficient and inadequate information;

Supply of information on cases that do not fall within the Group's mandate;

(b) With regard to replies from Governments:

Attempts not to cooperate with the Group;

Governments which have supplied information only after the Group has adopted a decision;

Incomplete and insufficient replies in regard to the allegations made by the source.

57. The Group notes with concern that in approximately half of the cases, Governments did not answer the communication forwarded to them, and a large number supplied incomplete information, after the established time-limit.

58. Furthermore, the Group welcomes the cooperation shown by certain Governments, not only in responding within the prescribed time-limit but also in supplying the Group with the most comprehensive information possible on cases communicated to them.

59. As to the supply of incomplete and insufficient information by sources, the receipt in recent instances of more complete information has reversed this trend, but it is essential for sources to realize that the Working Group must always remain within the terms of its mandate. The Group cannot act as a court of appeal and weigh up the evidence yet again. Only in cases in which the detention has no legal grounds (category I), in which the deprivation of freedom concerns the exercise of certain protected rights and freedoms (category II), or in which there has been a manifest violation of the guarantees contained in the international provisions relating to a fair trial (category III), and only in such cases, can the Group declare the deprivation of freedom to be arbitrary.

60. The Working Group must once more express regret at the abuse by many Governments of constitutional states of emergency. According to the report of the Special Rapporteur on the subject, in November 1993, there were declared states of emergency in 29 countries, in either all or part of their territory, and this already a feature pointed out in the Rapporteur's report on the previous year. The Group notes that a number of Governments make frequent use of states of emergency, the consequence being to diminish the normal guarantees that safeguard regular procedures, and thus seriously affect the freedom of the individual, since - on the pretext of remedying the situations invoked to declare the emergency - opposition political leaders, human rights activists, trade unionists and leaders of ethnic, religious, national or linguistic minorities are the first to be detained, often without any right to habeas corpus or with their procedural rights curtailed when they are tried for alleged crimes by courts set up under the emergency regime. The Working Group once again draws the Commission's attention to this type of abuse and, as it did last year, cites as an example of this kind of procedure the Government of Myanmar and the victim of such a situation, the well-known prisoner of conscience Aung San Sui Kyi.

61. As pointed out by the Special Rapporteur on the question of states of emergency in paragraph 14 of his report (E/CN.4/Sub.2/1993/23), there are other countries in which states of emergency have not been declared and which have and apply ordinary legislation empowering the Executive to adopt emergency measures, such as administrative detention for long periods, without the need for official proclamation of a state of emergency in order to do so. The Group has learned of cases in which "national security" decrees and other legal rules allowing for arrest with no subsequent criminal trial are invoked. These rules are a source of arbitrary detentions in which the person concerned is not entitled to due process, and this directly affects persons who have simply exercised rights recognized in international human rights treaties.

62. In 1993, as in previous years, the Group noted with concern that the cases declared arbitrary included a large number involving persons who had been deprived of their freedom for some years. Such cases were found in the following countries: Philippines (5 and 6 years, Decisions Nos. 5/1993 and 27/1993); Syrian Arab Republic (6 years and 23 years, Decisions Nos. 11/1993

and 35/1993); Libyan Arab Jamahiriya (11 years, Decision No. 24/1993); Republic of Korea (6 years and 8 years, Decision No. 28/1993); Yemen (10 years, Decision No. 51/1993); Ethiopia (5 years, Decision No. 55/1993); Egypt (5 years, Decision No. 61/1993). The three latter decisions will be reproduced in the Working Group's next report.

63. Last year, the Group expressed its concern about offences which are described in vague terms. This is, in the Group's view, a violation of article 10 of the Universal Declaration and article 15 of the International Covenant on Civil and Political Rights and seriously affects something that is essential to the right to justice. Again, it has been found that widespread use is made of "treason" (with the psychological connotation of rejection to which this offence gives rise in the mind of the public, particularly in regimes which describe themselves as "nationalist") for acts that are completely unrelated to the conventional concept of acts characterized as treason. In another country, "collaboration with the enemy" was used to punish a medical orderly who attended to both nationals and foreigners at a public hospital during the Gulf War, thereby performing his duties as he should.

64. The Commission invited the Working Group "to take a position in its next report on the issue of admissibility of cases submitted to the Working Group when they are under consideration by other bodies" (resolution 1993/36, para. 7), the implicit reference being to the principle of non bis in idem, whereby there cannot be two jurisdictions for the same case at one and the same time.

65. In addition, account should be taken of the specific nature of the Group's mandate compared with the mandator of other working groups or special rapporteurs asked for information on human rights issues, depending on the topic involved. This does not happen with the Working Group on Arbitrary Detention, which is called on to report on "cases" of arbitrarily imposed detention. Accordingly, the three essential factors of identical persons, subject-matter and case, which could lead to conflicting decisions, do not apply.

66. Consequently, to meet the Commission's concerns, the Working Group considers that a distinction should be drawn between two categories of situations, depending on whether the body seized of the matter deals either with developments in the human rights situation or with individual cases of violations alleged by persons.

67. When the other body seized falls within the first category (working groups, special rapporteurs or representatives, independent experts, whether country-oriented or thematic), the non bis in idem principle does not apply.

68. When, on the other hand, the other body seized falls within the second category (Human Rights Committee in the context of the First Optional Protocol to the International Covenant on Civil and Political Rights, on the one hand, the confidential procedure under Economic and Social Council resolution 1503 (XLVIII) of 27 May 1970, on the other), the non bis in idem principle could apply.

69. To find an agreed solution, the Working Group, for the purposes of proper coordination, sent a copy of this comment to the Chairman of the Human Rights Committee and the Chairman of the Commission's Working Group on the confidential procedure, so as to be in a position to formulate a "deliberation" on the question as a whole at the Group's next session.

70. Meanwhile, the Group has requested the secretariat to verify, on receipt of each communication, whether it involves a country that is a party to the Optional Protocol and, if so, to ask the source to specify whether it wishes to submit the matter to the Committee or to the Working Group.

B. Recommendations

71. The Working Group reiterates the recommendations formulated in its previous report (E/CN.4/1993/24), since all of them are still completely valid. Comprehensive and timely information from sources and Governments is, without any doubt, the main factor in the success of the Group's work and should lead to an improvement in levels of respect for fundamental rights and, in particular, personal freedom.

72. The Working Group also appeals to all Governments which maintain states of emergency for long periods, often without respecting the requirements of article 4 of the International Covenant on Civil and Political Rights, to limit their use to cases warranted by the seriousness and the emergency character of the situation. In no event may an arrest based on emergency legislation last indefinitely, and it is particularly important that measures adopted in states of emergency should be strictly commensurate with the extent of the danger invoked. At the same time, the Working Group encourages Governments to derogate from legal rules contained in ordinary legislation which, in actual fact, present the characteristics of states of emergency, in violation of the international human rights standards.

73. Criminal law requires precision, so that the conduct which is wrongful can be clearly understood by the persons held to be liable. Vague descriptions - about which the Group expressed its concern last year - are sources of abuse and encourage arbitrariness.

74. The Working Group considers, after three years' experience, that habeas corpus is one of the most effective means to combat the practice of arbitrary detention. As such, it should be regarded not as a mere element in the right to a fair trial but, in a country governed by the rule of law, as a personal right which cannot be derogated from even in a state of emergency.

75. Accordingly, the Working Group recommends that the Commission on Human Rights should support the efforts of the Sub-Commission on Prevention of Discrimination and Protection of Minorities in this field (see document E/CN.4/1994/2-E/CN.4/Sub.2/1993/45, resolution 1993/26, para. 3) to elaborate a declaration on habeas corpus with a view to arriving at an additional protocol to the International Covenant on Civil and Political Rights. Furthermore, the advisory programmes for Governments should give habeas corpus priority consideration, so that everyone knows that, in the event of detention, there is a speedy, informal and effective judicial remedy available.

76. In the light of what is said in paragraph 62 above, the Working Group recommends that the Commission should take appropriate measures for Governments to release promptly the persons whose detention has been declared arbitrary.

77. The Working Group once again expresses concern about the shortcomings of the secretariat owing to the lack of material and financial resources. The skilled work of the staff and its commitment to the cause of human rights and to the United Nations have made it possible to mitigate some of the enormous problems that have arisen. In this regard, the Working Group regrets that, at the seventh and eighth sessions, meetings had to be cancelled because of the lack of interpretation services. The World Conference on Human Rights made a special appeal to the Organization to make up for the lack of funds. The Working Group joins in that appeal, since it is of the opinion that the cause of human rights justifies any efforts necessary.

V. Conclusions and recommendations by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (E/CN.4/1994/31, paras. 666-671)

III. CONCLUSIONS AND RECOMMENDATIONS

666. As in previous years, it must be concluded that torture occurs, lamentably, in a significant number of countries. It is virtually axiomatic that situations where torture is systematically practised are characterized by one or both of the following phenomena:

(a) The legal system does not provide the institutional safeguards needed to restrain law enforcement officials and members of security forces from resorting to abusive and illegal behaviour to achieve their aims. In particular, persons suspected of crimes or of possessing information relevant to the detection of crime are left in the hands of their interrogators without access to the outside world or other authoritative external supervision. In effect, they are detained incommunicado. They cannot call the outside world to their aid and their captors and interrogators presume they are insulated from external interference. Indeed, in this sense, this element is connected with the second one.

(b) Those conducting the torture enjoy de jure or de facto impunity. De jure impunity generally arises where legislation provides indemnity from legal process in respect of acts to be committed in a particular context or exemption from legal responsibility in respect of acts that have in the past been committed, for example, by way of amnesty or pardon. De facto impunity occurs where those committing the acts in question are in practice insulated from the normal operation of the legal system. Such immunity may begin with the absence of safeguards of the sort mentioned in (a) above. Sometimes the safeguards may be formally in place and applicable, but those charged with maintaining public order are allowed to become "a law unto themselves" or, more accurately, the law is prevented from reaching their acts. Legality and the rule of law are dispensed with. In the case of torture, grave crimes are committed in the name of maintaining public order. Nothing can be more corrosive of general respect for law, without which no organized society can in the long term be secure.

667. The United Nations is aware of these phenomena. It was in the context of its efforts to combat torture that the General Assembly, in its resolutions 3218 (XXIX) and 3453 (XXX), set in motion the drafting of the instrument that was to become the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. This instrument constitutes a compilation of safeguards, respect for which would radically inhibit the incidence of torture in the world. Of crucial importance in this respect are Principles 15, 16, 18, 19, 24, 25, 29, 32 and 33. In this context, the Special Rapporteur recalls the words of Principle 15 whereby "communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days".

668. As regards impunity, the World Conference on Human Rights evinced a general concern with the problem in the Vienna Declaration and Programme of Action, part II, paragraph 91 of which states:

> "91. The World Conference on Human Rights views with concern the issue of impunity of perpetrators of human rights violations, and supports the efforts of the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities to examine all aspects of the issue."

In addition, concerning the specific issue of torture, part II, paragraph 60 states:

> "60. States should abrogate legislation leading to impunity for those responsible for grave violations of human rights such as torture and prosecute such violations, thereby providing a firm basis for the rule of law."

669. Furthermore, in resolution 1993/40, under which the Special Rapporteur was appointed, the Commission on Human Rights endorsed the recommendation of his predecessor that whenever a complaint of torture is found to be justified, the perpetrators should be severely punished, especially the official in charge of the place of detention where the torture is found to have taken place. (E/CN.4/1992/17, para. 294 (i)).

670. In the final analysis, the elimination of torture is a matter of political will. Its persistence is testimony to the failure of political will. Where it occurs the absence of safeguards and the prevalence of impunity is the measure of the gap between the commitment to its eradication and the political will required to enforce the commitment.

671. The Special Rapporteur appreciates the spirit of cooperation shown by those Governments that have responded to information he has transmitted to them. Yet he cannot conceal his disappointment at the incidence of responses that seem more designed to camouflage rather than deal with serious situations characterized by torture, such as flat denials, references to unspecified or unsubstantiated investigations, references to legal procedures that have already been so compromised as to be incapable of affording the inquiry or information or remedy they are alleged to be able to afford. There is no dearth of recommendations that may be made to Governments seriously committed to ending torture. Most of them have been made by the previous Special Rapporteur and endorsed by the Commission. The Special Rapporteur confirms his own view as to their value and commends them for serious action by Governments.

VI. Concluding observations by the Special Rapporteur on the right to freedom of opinion and expression (E/CN.4/1994/33, paras. 37-43)

IV. CONCLUDING OBSERVATIONS

37. The Commission on Human Rights, in resolution 1993/45, requested the Special Rapporteur to promote the right to freedom of opinion and expression, he will do so through the conclusions and recommendations of subsequent reports.

38. The conclusions and recommendations will be action-oriented. The Special Rapporteur's experiences in practice will form their basis. Their object will be the better protection of the right to freedom of opinion and expression, and their purpose the elimination of violations of this right.

39. At the same time, however, it seems to be unavoidable to touch on certain more theoretical questions in determining the nature and the scope of the right as a prerequisite for action. The Special Rapporteur will elaborate upon this component of his work in subsequent reports.

40. The Special Rapporteur intends to adopt a flexible and dynamic approach in which he considers different situations on their merits. Thus, attention will be paid to the question of admissible restrictions or derogations in an action-oriented manner that focuses on individual cases and specific circumstances. In general terms, however, it is to be recalled that such restrictions must meet certain criteria. They are: legitimacy, legality, proportionality and democratic necessity.

41. Although such restrictions or derogations may also limit the freedom of the press, it is to be noted that there should be independent and democratic, that is to say pluralist, media, also in situations of conflict and tension. The Special Rapporteur will dwell on this issue in subsequent reports.

42. The Special Rapporteur notes the urgent need for close cooperation with related mandates. In particular, with respect to the mandate of the Special Rapporteur on religious intolerance, there is a need for a clear conceptual distinction to be made between the freedom of thought, conscience and religion, and the freedom of opinion and expression. Special attention will be paid to this distinction in order to avoid unnecessary duplication of work and inconsistencies in the approach taken.

43. The Special Rapporteur emphasizes once more that effective action under his mandate to promote and protect the right to freedom of opinion and expression can only be ensured with the adequate support of the Centre for Human Rights and the full cooperation of Governments and non-governmental organizations.

VII. Conclusions by the Representative of the Secretary General on internally displaced persons (E/CN.4/1994/44, paras. 61-63 and E/CN.4/1994/44/Add.1, paras. 132-175)

IV. CONCLUSION

61. It is important to note that the mandate of the Representative calls for a complex, comprehensive and challenging programme of activities, which will require commensurate human and financial resources. From a human resource point of view, only one staff member at the Centre for Human Rights, appointed and reappointed on short-term contracts, has been working on the mandate. While her performance has been outstanding, the needs of the mandate by far surpass what she can humanly do to meet the demands of the mandate. In this connection, it should be acknowledged that the Government of Norway has generously offered to contribute the services of an expert, although the formalities of recruitment have delayed the appointment. In order for the Representative to continue implementing his programme of activities in a meaningful and productive manner, support for his mandate will have to be provided at a much more substantial level and on a more stable basis.

62. In his report to the General Assembly, the Representative of the Secretary-General made the point that it would be tragically ironic if the international community were to become complacent in addressing the crisis of internal displacement because of the existence of his mandate. Despite the Commission's concern, as demonstrated in the establishment of the mandate, and although the need for effective action is indisputable, the normative principles and the enforcement mechanisms for international action are clearly inadequate and ineffective.

63. If the international community is to rise to the challenge, then the mandate of the Representative of the Secretary-General must be seen as a catalyst and leverage for the adoption of more effective measures. It is in this connection that the proposed study leading to the development of a comprehensive strategy of international protection for internally displaced persons deserves support. It should, however, not be seen as a new initiative, for all it aims to do is to provide a more credible means of pursuing the objective of the mandate, in particular by facilitating the search for effective ways to address the crisis of internal displacement in a comprehensive, effective and durable manner.

The following are the conclusions reached by the Representative of the Secretary-General on internally displaced persons after his visit to Sri Lanka in November 1993. As they refer to numerous general issues related with the mandate, they have been included in the present document.

III. CONCLUSIONS AND RECOMMENDATIONS

A. Observations on issues

1. Definition of "internally displaced persons"

132. In his comprehensive study submitted to the Commission at its forty-ninth session, the Representative identified a number of tensions with regard to the definition of "internally displaced persons". The working definition suggested in that study was the one used in the analytical report of the Secretary-General, namely, that "internally displaced persons" are "persons who have been forced to flee their homes suddenly or unexpectedly in large numbers, as a result of armed conflict, internal strife, systematic violations of human rights or natural or man-made disasters; and who are within the territory of their own country" (E/CN.4/1992/23, para. 17). It has been argued by some sources that the definition should not be interpreted in such a way as to exclude small numbers or even individuals who are internally displaced. Another concern was that it would be undesirable to distinguish between civilian populations displaced by armed conflict and those who have not been displaced, but whose needs are similar.

133. While it is often true that the category to which a person is assigned has consequences for the type of relief assistance to which he or she is entitled, in Sri Lanka the Representative did not identify any major gaps in terms of the provision of relief assistance due to the lack of a general and agreed-upon definition of the term "internally displaced". The need for and type of such assistance is much more evident in the case of the camps. Those who are displaced but who are being accommodated with friends or relatives or have managed on their own presumably are harder to delineate as a group for assistance purposes. In terms of entitlements, therefore, it is important that if different groups need different types of assistance, they be defined in practical terms suitable for the specific circumstances in the country. This does not undermine the need of a general definition of the term "internally displaced"; it simply requires that any such definition retain a margin of flexibility to accommodate to the particular conditions in the country.

134. Generally, therefore, the situation in Sri Lanka confirms that it is very hard to reach a satisfactory and accurate definition. At the same time it exemplifies the fact that a large proportion of the internally displaced can be easily identified by virtue of the fact that they are housed in special camps and that they have special needs for assistance and protection different from the ones for the rest of the population. Another point to bear in mind is that most of these people have been uprooted because of the conflict, and that while many fled the violent incidents of 1983 or 1990, others may have left their homes less "suddenly" but for equally compelling reasons (e.g. military operations in a particular area, mines, etc.).

2. Protection of human rights

135. From the point of view of protection of human rights, the Representative was able to establish that at least in Sri Lanka the displaced are more

vulnerable than the rest of the population in certain ways: they may be forcibly resettled; more readily subjected to round-ups, arbitrary detentions or arrests; deprived of their dry rations or more frequently unable to get jobs. Those not displaced have been identified as being more self-sufficient and more resilient to the destructive impacts of the conflict.

136. The issue of resettlement to the original areas of residence in Sri Lanka has highlighted at least one problem which affects only those displaced: the extent to which the authorities of a country are allowed to compel an internally displaced person to return to an area where his/her life, personal security or freedom will be threatened for reasons similar to the ones that compelled his or her displacement in the first place. It is impossible to provide a full legal analysis in the context of this report. Arguably, however, the principle of non-refoulement, which is the foundation of refugee law, could be applied by analogy in the case of internal displacement. The freedom of movement as well as various other instruments prohibiting population transfers support and strengthen this assumption. Obviously, fundamental human rights such as the right to life, physical integrity and personal security, which are guaranteed, for instance, in the International Covenant of Civil and Political rights, run counter to practices that place them in serious and actual danger.

137. Irrespective of the precise legal basis, physical coercion or the threat thereof or the use of food as a tool or any other similar means to compel the internally displaced to return to an area where they would not be secure is unacceptable. Clarifying the precise legal principles can only sharpen this conclusion and provide a means of empowerment to the potential victims.

138. The need to clarify a quasi-non-refoulement principle for situations of internal displacement in a case like Sri Lanka will inevitably require formulating a definition of the term "internally displaced person". From a factual point of view, this person will frequently have fled because of a well-founded fear of being targeted and victimized in the course of an armed conflict or systematic violations of human rights. Violence in Sri Lanka offers just one more example of the fact that both the armed conflict and the violations of human rights occur in the context of ethnic, racial, religious, political or social cleavages. Even if it is argued that the Government is not at all responsible for these cleavages and the resulting violence, sending the displaced back to a dangerous situation amounts effectively to the same type of targeting and victimization. In such a situation it can be argued that the internally displaced person can no longer count on the protection of his/her own country as promised by the authorities.

139. Human rights law on its own is never sufficient for the effective protection of human rights. The lack of an effective judicial system almost precludes the implementation of these rights. The Representative was told in Sri Lanka that no legal problems have arisen from the situation of internal displacement at the judicial level. This contrasts sharply with the complaints voiced by the internally displaced themselves. It can only be explained by the general observation that the poorest and dispossessed layers of a society rarely have effective access to the judicial system. Given the number of internally displaced persons in Sri Lanka, the problems identified

may be, for the bar associations and the NGOs, issues worth seizing and challenging in the courts.

3. The involvement of the international community

140. There are three conceivable levels on which mechanisms to monitor the provision of assistance and protection to the internally displaced can be envisaged: the country level, the regional level and the international level. For different situations different types of activities at these levels are required as illustrated by such cases as Somalia, Liberia or Sri Lanka.

141. In a country like Sri Lanka it appears appropriate to say that there is no need for a massive mobilization at the international or the regional levels either to provide large amounts of relief assistance or to intervene in order to protect the internally displaced. In Sri Lanka the humanitarian presence of the United Nations agencies and the international NGOs and the significant leverage of the donors afford de facto a significant amount of protection. While their operations may be conducted on an ad hoc basis, this is not necessarily negative: it only exemplifies that dealing with problems in the field often requires ad hoc solutions, and that these solutions are frequently concrete evidence of the will to address the problems in a creative and effective manner.

142. Many have argued that these ad hoc solutions should remain marginalized and "fluid" and that any attempt to either place them in existing structures or try to create new structures to fit them in will only destroy them. These arguments refer both to the ad hoc nature of the involvement of the United Nations agencies and to the de facto nature of the protection they afford to the internally displaced. Therefore, according to these arguments, emphasizing the need for some monitoring presence in the camps, not only for humanitarian but also for human rights purposes, on a regular basis and making representations to the Government on behalf of the displaced would not work. Also, many believe that institutionalizing a post of a United Nations officer on internally displaced persons and placing him or her either under UNHCR or UNDP auspices would not be an idea agreeable either to the Government or to these agencies.

143. Despite the rationale of these attitudes, the Representative has found that both the operations of UNHCR and of UNDP vis-à-vis the internally displaced in Sri Lanka have beneficial effects on that population and should be studied and analysed more carefully.

144. The need to ensure some monitoring presence at the regional level has been stressed by many sources. While contacts with regional organizations, such as the Conference on Security and Cooperation in Europe or of its High Commissioner for National Minorities, the Organization of American States or the Organization of African Unity, need to be established, the Representative hopes to suggest additional means of collection of information on the regional level.

145. At the international level the Representative is convinced that there is a need for an effective mechanism to have a regular dialogue with the Governments concerned in order to study and analyse the problem in the

respective countries and attempt jointly to find solutions. The Representative currently has the possibility to undertake only very few substantive missions a year, with no provision and no resources for follow-up visits. This curtails greatly his ability to alert the international community to each and every situation of internal displacement that occurs in the world or take himself any steps to even register them. He is, therefore, committed to submitting as soon as feasible concrete suggestions and proposals as to this issue. Given the complexities, however, as well as the sheer magnitude of the problems involved, any such suggestions can only be modest attempts to deal with some aspects of the problems rather than with the generic problems themselves.

4. Addressing the root causes

146. The conclusion of the Representative on the situation in Sri Lanka is that unless a political solution to the conflict is found, there can be little hope either of ending the conflict or of solving the problem of internal displacement. The United Nations, or more generally the international community, does not have a mandate to intercede with the Government on this issue, although the Government welcomes their presence and assistance. The Representative does not perceive himself as, nor does he have the mandate of a peace negotiator. However, if he limited his analysis only to the interim situation of the displaced in Sri Lanka, without regard to their long-term prospects of returning home, he would be taking an obvious step with only short-term and limited prospects. He is convinced that it is time that the parties to the conflict should balance carefully their considerations for continuing the war and for jeopardizing the welfare of the people of Sri Lanka. He also believes that the international community should exhibit an interest not only in providing financial assistance but also in ensuring that such assistance advances the cause of peace, security and stability in the country.

B. Specific proposals

1. The nature and scope of assistance

147. As long as internal displacement persists, assistance to the affected population, food rations being the absolute minimum, will continue to be urgently needed. Other services, such as the quality of shelter and sanitation, also need improvement, especially as displacement appears destined for long duration in the absence of peace. Alternative forms of assistance may also need to be devised for other vulnerable groups. Where the need exists, any discriminatory practice in the provision of assistance or other benefits should be avoided.

148. On the other hand, the constraints on the resources available to the Government will naturally limit the scope and level of possible assistance. This is one of the reasons why income-generation projects and the provision of employment opportunities should be placed high on the Government's agenda.

149. The current level of the provision of education is laudable and needs to be maintained. Where facilities are inadequate, efforts are needed to address these inadequacies to keep a uniform level in this area of commendable accomplishment.

2. With regard to the security situation

150. Efforts to identify missing or disappeared persons and inform their families need to be intensified, especially as aspects of family security may depend on the status of these missing members.

151. Militant groups should be discouraged from presence in the welfare centres since that tends to provoke adverse relations with the authorities and threaten the security of the civilian population.

152. Cordon and search operations in or around welfare centres also need to be avoided as far as possible, unless serious security exigencies dictate otherwise. Likewise, military presence and operations in or near the welfare centres and resettlement sites need to be kept to an absolute minimum.

3. The issue of resettlement

153. Sincere efforts should be made to comply with the Government's resettlement guidelines which should be made more widely known to the local authorities, the NGOs and the displaced.

154. Any type of coercion, including the threat of cutting dry rations to induce return, should be avoided. Conditions in the camps should not be allowed to become so perilous or dehumanizing that the displaced prefer the fear of being persecuted or victimized to remaining in the camps.

155. Accurate information regarding the conditions of security and welfare in the area of original residence should be provided to those to be resettled. The relevant committees already in operation should be supported to enhance their efforts in this regard.

156. The development of procedural safeguards for the voluntary nature of the resettlement needs to be considered. For instance, those to be resettled may be required to sign a form declaring their wish to resettle. Such a form would be similar to the one that UNHCR uses for its voluntary repatriation programmes.

157. Efforts should be made to avoid giving those to be resettled misleading information regarding the benefits they are to expect from the resettlement. Such expectations can only lead to disappointment and increase the already existing tensions.

158. To allow time and flexibility in addressing the complex issues involved, resettlement should not be carried out with a rigid time schedule. The issue of resettlement is currently connected to the projected referendum and the local elections. It is therefore seen as having become politicized and too rigorously programmed. To the extent that the referendum and the local

elections are predicated on the resettlement programme, the Government may have to consider postponing them to allow for a smoother, more acceptable process of resettlement.

4. The search for durable solutions

159. As the settlement projects of populations in the east at this stage appear to be particularly controversial, careful reconsideration of those projects may be necessary. Such reconsiderations also require that members of the communities who originate from that area be given special attention in the settlement process.

160. Priority needs to be given to developing alternative long-term solutions for those communities that will not be able to return to their original areas of residence in the foreseeable future.

161. Efforts to come to a negotiated peace agreement need to be vigorously pursued. If the war continues, the prospects of maintaining peace and security even in those areas that are now relatively peaceful may be seriously jeopardized.

162. As increased freedom of information and expression of opinion would facilitate the spread of peace initiatives, publicize the plight of the displaced and give a clear picture of the magnitude of the war and its consequences, initiatives and efforts in that direction should be encouraged and supported.

163. The undertaking made by the Government of Sri Lanka at the forty-ninth session of the United Nations Commission on Human Rights that it will review, revise and compile the Emergency Regulations and that it will explore all avenues to arrive at a negotiated political solution should also be pursued and supported.

5. The legal framework

164. The Government has been urged to sign Protocol II Additional to the Geneva Conventions and also to consider signing the other human rights instruments to which it is not yet a party.

165. There is also an urgent need to address legally any outstanding discriminatory practices on the basis of ethnicity, religion and language and to reverse any public tendencies that may operate to the disadvantage of the minorities.

6. The role of the United Nations agencies

166. The presence of UNHCR, especially in the Open Relief Centres, has had significant beneficial effects and needs to be maintained. It guarantees not only better living conditions, but also protection. The ORCs play an important role in assisting the people to remain near their homes and return to them whenever it is safe to do so.

167. Given their evident beneficial effects, the operations of UNHCR and UNDP in Sri Lanka should be analysed and built upon. They should be financially supported and their authority to continue these operations should be clarified.

168. The United Nations agencies, in conjunction with the NGOs, should be encouraged to continue their efforts to share information and coordinate their activities.

7. The role of the non-governmental community

169. Lawyers' associations need to be actively involved in the protection of the fundamental rights of the internally displaced.

170. The NGO community should also make efforts to become more operational in areas where the NGO presence is currently limited. The NGOs should be encouraged to operate without undue interference from the State or other combatant parties.

171. The LTTE should also be called upon to abide by the principles of humanitarian law, cease any further expulsions of Muslims or other ethnic communities and to permit the free exit of Tamils from the areas it controls.

8. The role of the donor community

172. International efforts towards a negotiated solution need to be stepped up considerably. Such efforts need to be directed towards both the Government and the LTTE.

173. The donor community is encouraged to channel funds for humanitarian assistance and rehabilitation to NGOs and other international agencies. Such assistance should also be given to the Government, in some instances earmarked for the benefit of the tragic victims of internal displacement.

174. Given the humanitarian tragedy of the conflict raging in Sri Lanka, a strong case can be made for monitoring the manner in which financial or other assistance is used. Donors should scrutinize continuously the progress made in the human rights field and in the efforts to reach a peaceful resolution of the conflict. Foreign assistance should help promote sustainable development, protection of the environment and, above all, peace and security for the country.

C. Concluding comment

175. As a concluding comment, several points need to be highlighted about the Representative's experience with Sri Lanka as a case study. First, both in the magnitude of the crisis and the cooperation of the Government with the Representative and the international community, Sri Lanka is indeed a model to be emulated. Second, the Representative has tried to build on this positive model in an attempt to meet the Commission's and the General Assembly's emphasis on country visits and dialogues with Governments on behalf of the internally displaced. Third, and in conformity with the Representative's commensurate emphasis on country profiles, this report has tried to achieve

the necessary level of depth of description and analysis which he aspires to follow with respect to other country missions and reports. Fourth, that within the framework of mutual cooperation with Governments which Sri Lanka typifies, the report has been rather thorough and candid in exposing the problems to be addressed, the objective being to facilitate a cooperative resolution to the issues involved. Fifth and finally, the width and depth of the coverage of this and other country profiles aim at producing documents that can be helpful to organizations and individuals concerned and actually or potentially involved in the search for solutions to the problems of internal displacement. It is, therefore, hoped that it is a document that combines the necessary level of scholarly depth, intellectual integrity, sound policy and practical utility.

VIII. Conclusions and recommendations by the Special Rapporteur on measures to combat contemporary forms of racism, racial discrimination, xenophobia and related intolerance (E/CN.4/1994/66, paras. 50-52)

IV. CONCLUSIONS AND RECOMMENDATIONS

50. In addition to the activities which the Special Rapporteur has outlined in the section dealing with methods of work, he suggests that scientific research should be done on the nature and scope of the problems covered by his mandate, particularly through such projects as:

An interdisciplinary seminar on the problems of the theoretical aspects and specific manifestations of contemporary forms of racial discrimination, together with a study of measures already taken or to be taken;

Workshops (one per continent) during the first two years of his mandate; and

A conference for the purpose of consolidation during the third year of his mandate. These scientific encounters will be organized in close collaboration with the specialized agencies concerned with human rights, the NGOs and experts working in the field.

51. The Special Rapporteur is convinced of the importance of education and its far-reaching consequences and suggests that measures should be studied to prevent actions and behaviour giving rise to discrimination - prevention being better than cure - and that a system of human rights teaching should be established in all States in close cooperation with specialized agencies such as UNESCO and with Governments. There would be a study of how to make this system mandatory and effective. Could cultural and social racism not be gradually checked by theoretical teaching as well as practical methods (plays and cultural events) which would enable a country's different ethnic or cultural groups to get to know, learn, understand and appreciate each other's culture, and thus facilitate cultural intermingling? Today, in the "finite world" or the "planetary village" we inhabit, ethnic, religious and cultural minorities could, thanks to the large-scale impact of the media, achieve a better mutual understanding in cultural terms and accept each other to a greater extent. Greater tolerance would thus grow progressively between peoples, migrants, immigrant workers and their families and aboriginal or indigenous peoples. In short, the Special Rapporteur attaches great importance to the prevention of manifestations of racism in any form whatsoever by governmental, legislative, administrative, economic and social and above all educational measures.

52. Lastly, the Special Rapporteur would suggest that some thought might be given, at the conclusion of the Third Decade to Combat Racism and Racial Discrimination to erecting a memorial in honour of the victims of racial discrimination. It could be set up on the Place des Nations within the grounds of the United Nations at Geneva to promote an awareness of the evils of racial discrimination and to draw attention to the continuing and sustained activities of the United Nations against all forms of racism and on behalf of human rights. If this idea were to find favour, the activity would be financed by voluntary contributions. Our world does not lack men of goodwill, humanists or benefactors.

IX. Conclusions and recommendations by the Special Rapporteur on the implementation of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (E/CN.4/1994/79, paras. 94-114)

III. CONCLUSIONS AND RECOMMENDATIONS

94. The implementation of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief cannot be dissociated from the general question of respect for all human rights, which cannot be truly promoted in the absence of democracy and development. Any measures for the promotion of human rights should therefore be simultaneous on the one hand with measures to establish, strengthen or protect democracy as the expression of human rights at the political level and, on the other hand, with measures to contain and gradually reduce extreme poverty and encourage the right of individuals and peoples to development as the expression of human rights and solidarity at the economic, social and cultural level. This means, as highlighted by the Vienna Conference, that "Democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing" and that "All human rights are universal, indivisible and interdependent and interrelated".

95. The Special Rapporteur is of the opinion that any dissociation of the elements of the trilogy - just as any selectivity in this area - would tend to have the effect of reducing human rights to a discourse of variable consistency and scope, which could have an unfavourable impact on the mechanisms and procedures for the protection of human rights.

96. If the protection of human rights constitutes a legitimate concern of the international community, it is because, on principle, it is above individual contingencies and considerations and because its motives as well as its aims are by definition supposed to be and to remain justifiable, since there is a need to ensure that human rights are respected and prevail over any selectivity and over any other aims and objectives. The Special Rapporteur is of the view that it would be desirable to give greater assurance to all the parties concerned by respect for human rights and to assert more forcefully the need to ensure the protection of human rights from anything which is alien to it by steering equally clear of interference, rejection or evasion.

97. Hatred, intolerance and acts of violence, including those prompted by religious extremism, could serve to create situations that might, in one way or another, threaten or jeopardize international peace and security and adversely affect the right of individuals and peoples to peace. It is the view of the Special Rapporteur that the preservation of the right to peace should encourage greater development of international solidarity, in order to stamp out religious extremism, whatever its source, by attacking both its causes and its effects, without selectivity or ambivalence, and by laying down initially a minimum set of joint rules and principles of conduct and behaviour in regard to religious extremism.

98. It is in the minds of men that all forms of intolerance and discrimination based on religion or belief take form and it is at this level, much more than at others, that action should primarily be taken. Education

could be the key instrument for combating discrimination and intolerance. It could contribute decisively to instilling the values that focus on human rights and on the emergence among both individuals and groups, of attitudes and behaviour exhibiting tolerance and non-discrimination and thus participate in disseminating the culture of human rights. The school has a vital place in the educational system. Therefore, special attention should be paid the world over to what school curricula impart about religious freedom or tolerance, particularly at the primary and secondary levels. The Special Rapporteur is deeply convinced that lasting progress with regard to tolerance and non-discrimination in the matter of religion or belief could be achieved first and foremost through the school. He feels that it would be appropriate to conduct a survey on the questions that fall within his mandate in the form in which they could appear in school curricula. Such a survey would make it possible to envisage the formulation, jointly with the specialized international organizations in particular, of an international school strategy to combat all forms of intolerance and discrimination based on religion or belief. This strategy could centre on the elaboration and realization of a minimum joint programme of tolerance and non-discrimination.

99. For the eighth consecutive year, the Special Rapporteur has examined, under the mandate entrusted to him by the Commission on Human Rights, incidents and governmental measures reported to be inconsistent with the provisions of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. This year, even more than in the past, he wishes to express to the Commission and to the States members of the Commission his deep gratitude for their trust in him so far and for the useful dialogue which he has already had with some of them.

100. In the course of the present reporting period, the Special Rapporteur has received many allegations concerning violations of the rights and freedoms set out in the Declaration and has thus been able to gain a clearer idea of the factors impeding its implementation. The positive dialogue which has been established between him and Governments over the years has enabled him to ask the latter specific questions about particular incidents or cases which involve their countries. He welcomes the spirit of openness, the readiness to listen, the sustained interest, as well as the willingness to arrive at practical solutions which he encountered among the Governments approached during this initial phase of his mandate. He also appreciates the remarkable progress made in some countries such as Albania and Bulgaria in relation to various questions falling within his mandate. Lastly, he notes the efforts made by other countries such as the Republic of Moldova and Romania to contain and resolve the difficulties posed by some particular aspects of the religious problems which they face.

101. The Special Rapporteur wishes especially to thank the non-governmental organizations for the excellent cooperation which they have extended to him and to emphasize the dynamic role which they have played in order to provide him constantly with new information about the facts and problems falling within his mandate. The information communicated to the Special Rapporteur demonstrates the complexity of the concerns felt by the international community about the problems of religious intolerance and discrimination and the genuine efforts being made by many Governments to limit their impact. Once again, the role of the Special Rapporteur is not to make value judgements

or level accusations but, rather, to identify factors or even certain of the causes underlying the emergence of phenomena of religious intolerance or discrimination. In this way, he hopes to mobilize the active sectors of international public opinion and to establish a lively dialogue with the Governments and any other parties concerned. With this in mind, the Special Rapporteur intends to use the internationally recognized norms on religious freedom as the basis for his action. These include article 18 of the Universal Declaration of Human Rights and of the International Covenant on Civil and Political Rights as well as all the provisions of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

102. During the period covered by this report, the Special Rapporteur received complaints from virtually all regions of the world. Various manifestations of religious intolerance have persistently occurred in countries at varying stages of development and with different political and social systems and have not been confined to a particular faith. The majority of the complaints concerned violations of the right to have the religion or belief of one's choice, the right to change one's religion or belief, the right to manifest and practise one's religion in public and in private, the right to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief and the right not to be subjected to discrimination on these grounds by any State, institution or group of persons.

103. As the Special Rapporteur has already highlighted in his previous reports, the infringement of the rights mentioned above jeopardizes to a greater or lesser degree the enjoyment of other fundamental rights and freedoms enshrined in both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, as well as in other human rights instruments. During the present reporting period, the failure to respect certain provisions of the Declaration has had a negative bearing on the right to life, the right to physical integrity and to liberty and security of person, the right to freedom of expression, the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment, and the right not to be arbitrarily arrested or detained. The Special Rapporteur notes once again that the rights of persons belonging to religious minorities have been frequently infringed, often seriously, in the countries with an official or clearly predominant majority religion.

104. Acts of religious intolerance and discrimination have been characterized in many instances by the use or threat of violence. In most cases, they have encompassed the prohibition and repression of external manifestations relating to a particular religion. Confrontations between followers of different faiths have continued as have physical and mental persecution. Many measures of intimidation and even of repression have been applied for belonging to a specific faith or religious group, such as arbitrary detention, heavy prison sentences or life imprisonment, ill-treatment or torture, abduction or even summary or extrajudicial execution. Persons who have converted to another, especially minority, religion, are still severely punished in several countries. The Special Rapporteur notes that there are sometimes veiled economic motives for these measures. In other countries, mandatory religious instruction has been given to persons not belonging to the official religion.

105. There is also the continuing application of administrative sanctions, against members of certain faiths, such as confiscation of their property, denial of access to education and employment, exclusion from public service and even denial of salaries and pensions. Certain legal safeguards such as the right to a fair trial and the right of legal recourse are no longer respected or applied by several countries. Members of the clergy belonging to various denominations have continued to be subjected to discrimination or even to receive death threats as a result of their work in their respective communities performed alongside their religious functions.

106. This year again, the Special Rapporteur has received alarming reports of acts of religious intolerance and discrimination being performed by groups of individuals with little or no intervention on the part of the security forces. He is also deeply concerned by allegations that the armed forces or members of the security services actually participated in such activities in a number of cases. The Special Rapporteur has once again noted how difficult it is to curb or eradicate the propagation of extremist or fanatical opinions and overcome the distrust inspired by members and groups of certain denominations or adherents to sects. Although the manifestations of religious discrimination and intolerance are often caused by a variety of historical, economic, social, political or cultural factors, they are frequently also the result of sectarian and dogmatic attitudes. In view of their possible adverse effect on the stability of international relations, the Special Rapporteur is of the opinion that States should remain particularly vigilant in this regard and make determined efforts to combat religious discrimination and intolerance at all levels.

107. The Special Rapporteur is deeply concerned over the developments in certain countries and in particular in Algeria, where there has been considerable loss of life. Academics, doctors, journalists and clergymen have also been the victims of violence which reflects attitudes and behaviour of intolerance and discrimination based on religion or belief. The Special Rapporteur is also concerned about the mounting tension and antagonism between religious groups or groups claiming to draw inspiration from certain religions in several regions of the world. In his report to the Commission on Human Rights at its forty-eighth session (E/CN.4/1992/52, paras. 47 and 48), the Special Rapporteur mentioned the attack on the sixteenth-century Babri Mosque in Ayodya, India, which was destroyed by Hindu militants at the beginning of December 1992 in clashes which had resulted in more than 1,000 deaths at the time when the report was being finalized. This deplorable incident also gave rise to the demolition of several Hindu temples in retaliation for this act as well as to violent outbursts of religious intolerance both in India and in a number of neighbouring and other countries. The Special Rapporteur is also deeply concerned over the allegations of systematic violations of a wide range of human rights of members of the Muslim community in Myanmar. He feels, furthermore, that greater attention should be paid in the immediate future to the increasing number of problems posed by religious extremism, religious minorities, and sects and other similar or comparable communities.

108. The Special Rapporteur also notes that the claims to recover their property by several churches in different Eastern European countries such as Romania have not been fully met, although appropriate legislation has been passed to that effect. He considers that the efforts made by the authorities

concerned deserve to be supported and encouraged, all the more so as the changes needed are sometimes difficult to carry out and as, in any transition, real obstacles can be encountered which it will take time to eliminate.

109. The Special Rapporteur is deeply concerned over the critical situation that has developed in the territory of the former Yugoslavia. The policy of demolishing the religious and cultural foundations being pursued there, the destruction of religious and cultural monuments and sites as well as the threats to exterminate the Muslim community are a constant challenge to the entire international community. It is appropriate to point out, once again, that in his latest report to the Commission on Human Rights, the Special Rapporteur responsible for examining the human rights situation in the territory of the former Yugoslavia "reminds the world that the Muslim community in Bosnia and Herzegovina is threatened with extermination" (E/CN.4/1994/47, para. 228).

110. The Special Rapporteur considers that the establishment of interdemoninational dialogue among the main religions is of the utmost importance in combating the injurious effects of the sectarian ideas and intransigence demonstrated by certain extremist groups and enhancing religious tolerance throughout the world. The prerequisite for the establishment of a climate conducive to dialogue and understanding is respect for the rule of law and the proper functioning of democratic institutions. The development of the rights and freedoms established in the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief can only be achieved if special attention is given to the complex underlying factors which hamper the exercise of these rights, for the sectarian ideas and intransigence and even manifestations of violence to which they can lead, are often linked to socio-economic or other inequalities. The strengthening of democracy in many countries and the introduction of appropriate adjustments to the legal and constitutional framework will contribute decisively to the creation of a genuine climate of religious tolerance.

111. The Special Rapporteur wishes to reiterate the recommendations already formulated in his previous reports regarding the urgent need for those States which have not already done so to ratify the relevant international human rights instruments and to avail themselves of the existing machinery for monitoring the implementation of those instruments. States should also examine the possibility of preparing a binding international instrument on the elimination of intolerance and discrimination based on religion or belief, pursuant to the recommendations made by Mr. Theo van Boven, expert of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, in his 1989 study (E/CN.4/Sub.2/1989/32). Such an instrument should not, however, be hastily drafted. Time is still needed to achieve significant progress in respect of religious freedom and to combat intolerance and discrimination based on religion or belief.

112. The Special Rapporteur hopes that States will remain alert to situations that could lead to violations of any of the rights embodied in the Declaration and take the necessary measures to detect any gaps in their own legislation and make the necessary amendments, and at the same time establish the constitutional and legal safeguards that will ensure the protection of

these rights. In the event of incompatibility with the provisions of the Declaration, States should adopt the necessary constitutional and legislative amendments.

113. States should also make available to persons who are victims of acts of religious intolerance or discrimination the relevant administrative and judicial remedies in order to punish such incidents. States should also give thought to the conciliation mechanisms that should be established in order to settle disputes resulting from acts of religious intolerance. Since impunity encourages the persistence of human rights violations, States should also create national institutions to promote tolerance in matters of religion and belief. For example, the Government of India issued an ordinance, on 28 September 1993, for the establishment of a national human rights commission, similar commissions in several States of India as well as the relevant human rights courts.

114. The Special Rapporteur would like, finally, to highlight the crucial importance of disseminating the principles contained in the Declaration among lawmakers, judges, lawyers and civil servants in order to encourage them to work actively for the elimination of some of the root causes of religious intolerance. He would like to emphasize again the need to promote the ideals of tolerance and understanding in matters of religion and belief through education, the introduction of national and international human rights standards in school and university curricula and the proper training of teaching staff. Furthermore, he wishes to emphasize the important role of press conferences and information seminars in achieving the broadest possible dissemination of the principles set forth in the 1981 Declaration and encouraging understanding and tolerance in matters of religion and belief.

X. Recommendations by the Special Rapporteur on the sale of children, child prostitution and child pornography (E/CN.4/1994/84, paras. 221-261)

V. RECOMMENDATIONS

A. General

221. The Special Rapporteur made a number of recommendations in his previous reports. The Commission on Human Rights, States and national and international organizations are invited to bear them in mind and facilitate their implementation and evaluation at the international and national levels.

222. Updated information on all areas of concern to this mandate should be collected consistently by all countries and sent to the Centre for Human Rights and relevant agencies and personnel for collation, analysis and dissemination. A national focal point should be identified and/or established for this purpose, and it should liaise effectively with the Special Rapporteur. Insufficiency of data should be overcome by the designation of a unit under the national focal point to gather relevant information and to make it widely available. Networking between governmental and non-governmental organizations and individuals on these matters should be encouraged.

223. More field visits to both developing and developed countries are essential to ensure the Special Rapporteur access to information at the local level. States are requested to assist this process. Visits to North America and Africa are planned in 1994: the States of these regions are invited to collaborate closely with the Special Rapporteur and facilitate his access to relevant information.

224. The States concerned should respond effectively to communications by the Special Rapporteur on behalf of children in difficulties. They should also initiate independent and objective monitoring at the national level to complement the work of the Special Rapporteur.

225. States should accede to all the relevant human rights instruments and implement them effectively. In particular, they should accede to the Convention on the Rights of the Child and should enforce it fully at the national and local levels. The national focal point mentioned above (see para. 224) should gather information on areas of relevance to these instruments and should forward it regularly to the international human rights mechanisms, including the Special Rapporteur, mandated to deal with child-related issues.

226. The Working Group on Contemporary Forms of Slavery should be strengthened so as to enable it to become more proactive. This should include providing it with the power to request comments from Governments and the ability to establish more extensive dialogue with all concerned entities, and the appointment of more experts from the field to ensure the sustainability and continuity of its work. The Voluntary Trust Fund on Slavery should be supported more concretely by Governments and concerned entities to enable it to operate effectively, with adequate resources, and to make it accessible to those working at the field level.

227. The Special Rapporteur's work is increasingly being adversely affected by technical and other constraints: support should be provided to ensure that he is able to carry out his mandate effectively. The Special Rapporteur invites close cooperation from the Committee on the Rights of the Child, the Special Rapporteur on the exploitation of child labour and debt bondage recently appointed by the Sub-Commission, UNICEF, INTERPOL, ILO, WHO, the Crime Prevention and Criminal Justice Branch of the United Nations and other concerned entities to reinforce the work he is carrying out under the mandate.

228. The Commission on Human Rights should engage in dialogue with all relevant financial and development aid agencies, including UNICEF, UNDP, ILO, UNESCO, WHO, the World Bank, IMF and regional and bilateral aid agencies, to raise issues of concern to this mandate and integrate them into the operations of these agencies. Economic structural adjustment programmes should be reassessed so as to cushion families and children against economic and social deprivation. The aim would be to link socio-economic development issues with the need to prevent violations of children's rights and to promote adequate resource allocations and responsible programming.

B. Short-term measures

229. The term "short-term measures" relates to measures which should preferably be implemented in the next five years. Many of the short-term measures suggested should also be part of medium- and long-term strategies; they are not mutually exclusive and should be seen as part of a continuing process.

230. In the light of the International Year of the Family in 1994, the Commission on Human Rights should collaborate with all States and with national and international organizations to highlight measures needed to promote a positive nexus between the child and the family, and to counter child abuse and exploitation.

231. The Commission on Human Rights, States and national and international organizations should disseminate the Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography, and the Programme of Action for the Elimination of the Exploitation of Child Labour to all communities and ensure that there is effective monitoring and implementation of these Programmes at all levels, with adequate resource allocations. States and other concerned entities should translate the Programmes of Action into all national and ethnic languages and report annually on progress in the implementation process to the Commission on Human Rights.

232. States and national and international organizations are invited to bear in mind strategies of prevention, protection and rehabilitation in curbing the sale of children, child prostitution and child pornography. All three strategies involve short-, medium- and long-term planning, implementation and evaluation. Of the three strategies, the most immediate, in the short term, is that of protection: adequate laws, policies and enforcement can have instant impact on the situation, given the necessary political and social will. All countries already have laws which can be used to protect children, for example, the criminal law; they should be implemented in a more committed

manner. This is all the more significant because the scenario is that of criminality, and only through effective law enforcement will it be reduced in the short term. Realizable goals depend upon close coordination and adequate budgetary allocations between the national and local levels.

233. A key priority for action in the short term, with medium- and long-term implications, is in the area of prevention. States and national and international organizations should promote effectively anti-poverty strategies, the improved flow of information, universal primary education, community consciousness raising and mobilization, the satisfaction of basic needs, occupational opportunities and alternative forms of employment for families.

234. As a root cause of the exploitation of children is criminality, States and national and international organizations should broaden anti-crime measures; and community participation should be maximized to protect children through "community watch" programmes, including an alliance between village committees, other vigilance committees, religious leaders, local teachers and leaders, youth and child groups, professional organizations, the business sector and the mass media.

235. States and national and international organizations should address the issue of improving the quality of the police force, immigration authorities, judges, inspectors and other law enforcement personnel. Low pay and insufficient training in children's rights often results in poor law enforcement and corruption. The better of such officials need incentives and in-service training for quality performance. The worst should be identified and penalized for being part of the criminal system.

236. States and national and international organizations, together with the Commission on Human Rights, should initiate a "pro-child-anti-crime network" with INTERPOL, national police, immigration and law enforcement authorities, and local community groups to guard against child abuse and exploitation. Each entity in this network should have a cell dealing with the issues of sale of children, child prostitution and child pornography so as to promote consistent vigilance and the relevant action.

237. Increased collaboration between the Committee on the Rights of the Child, the Working Group on Contemporary Forms of Slavery, the Crime Prevention and Criminal Justice Branch of the United Nations, INTERPOL, other relevant entities, and this mandate is desired. Annual meetings between these entities should be promoted to ensure effective coordination and cooperation.

238. States and national and international organizations should highlight the responsibility of the customer in child abuse and exploitation through national and international campaigns. This implies, in particular, a call to incriminate customers of child victims of prostitution and those who possess child pornography.

239. States should encourage, through bilateral and other means, exchange programmes among law enforcement personnel, as well as related training programmes, to deal with transnational trafficking in children. Such programmes may, for example, entail stationing police personnel in other

countries to track the behaviour of one's own nationals where there is a threat to the children of those other countries. This can be facilitated by increased exchange of information, such as lists of known paedophiles and crime-linked data.

240. States and national and international organizations should take remedial action to help children who are abused and exploited. This may include judicial remedies, such as prosecution of abusers, and the provision of legal aid and assistance, and/or socio-medical remedies such as the provision of hospices, counselling and other support facilities. Facilities should be provided to help those with health problems, including HIV/AIDS. These may include medical and community facilities to help children and their families, as well as measures to protect them against discrimination and other harm. Emphasis should be placed upon family-based and community-based rehabilitation rather than State institutionalization.

241. In regard to adoptions, ratification of and accession to the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption by States should be promoted. Both the countries of origin of adopted children and the receiving countries should become parties to this convention and enforce it effectively. Accession to and implementation of the Hague Convention on the Civil Aspects of International Child Abduction by both the countries of origin of abducted children and receiving countries should also be strengthened.

242. Where children are trafficked across frontiers, States and national and international organizations should ensure that the true age of the children is ascertained by independent and objective assessment, preferably with the cooperation of the non-governmental sector. If they are to be returned to the country of origin, their safety must be guaranteed by independent monitoring and follow-up. Pending their return to the country of origin, they should not be treated as illegal migrants by the receiving countries but should be dealt with humanely as special cases of humanitarian concern. Upon the children's return, the country of origin should treat them with respect and in accordance with international human rights principles, backed up by adequate family-based and community-based rehabilitation measures.

243. States and national and international organizations should work towards closer monitoring of organ transplantation in order to prevent abuses. National laws should prohibit the use of children for organ transplants, bearing in mind the WHO Guiding Principles referred to above (para. 102). The medical sector and related professional organizations should be mobilized as a watchdog against abuses.

244. States and national and international organizations should discourage sex tourism, and the private sector, including the service industry, and the World Tourism Organization should encourage accountability in this regard. Peer group pressure in the private sector may help to reprimand those in the same sector who are involved in child exploitation. A code of ethics might be promoted, stipulating the industry's stand against child exploitation.

245. State and national and international organizations should ensure that the issue of child prostitution and other forms of child exploitation is raised

more openly in the classroom so as to forewarn children of the dangers. This is particularly important at the primary level of education, as many children do not carry on their education to the secondary level for lack of resources, but enter the labour market under the impending threat of exploitation.

246. States should raise the age of recruitment to 18 and prohibit the use of child soldiers below that age. When child soldiers are captured in combat, their prisoner of war status must be respected. If they have escaped from recruitment, they should be accorded refugee status and accorded international protection. Dialogue with the military of both governmental and non-governmental forces is needed to curb the use of child soldiers. In promoting adherence to international human rights and humanitarian law instruments, safeguards are needed for all children in situations of armed conflict.

247. Regional organizations, including the Council of Europe, the European Union, the Organization of American States, the Organization of African Unity, the Arab League, the South Asian Association for Regional Cooperation and the Association of South-East Asian Nations, should set a specific agenda and establish a unit to monitor the exploitation of children as an urgent priority for their work. They are also requested to cooperate closely with the Special Rapporteur with respect to his mandate.

C. Medium- and long-term measures

248. The term "medium- and long-term measures" is used to indicate those measures which may need more than five years to initiate and/or accomplish. Many of the short-term measures discussed above will also need to be continued in the medium and long term. If the medium- and long-term measures set out below could be initiated and/or accomplished in the short-term, this would also be welcomed.

249. States should reappraise their development strategies so as to ensure greater equity, income distribution and resource allocations, including land reform and restructuring of budgets, for needy children and their families. As a root cause of child exploitation is poverty, this must be tackled with a sustained strategy both in national and international settings to ensure greater social justice for all.

250. A central registry of all adopted children and of all missing children should be set up in every country, and transfrontier exchanges of information should be promoted to trace and monitor the children and entities concerned.

251. States and national and international organizations should foster an integrated and interdisciplinary approach to tackle the root causes of the exploitation of children, bearing in mind the Programmes of Action referred to above. National laws need to be reformed to extend jurisdiction to cover offences of nationals against children in other countries.

252. States and national and international organizations should provide greater assistance to needy families and children in order to lift them out of the rut of poverty and economic deprivation which drive children into various forms of exploitation. Monitoring of parental behaviour, supervision by

social service personnel, access to occupational facilities and alternatives, provision of family and child subsidies, and universal access to education are required to encourage changes of behaviour on the part of parents and to protect children.

253. States and national and international organizations should ensure that laws and policies cover not only formal employment but also less formal types of employment which give rise to child labour exploitation, for example, in the area of agriculture and domestic service, and that they are implemented effectively. A sustained strategy with not only legal but also other measures is required to eradicate bonded labour.

254. States and national and international organizations should promote the promulgation of laws and policies, where they do not already exist, to incriminate customers and intermediaries in the case of sexual exploitation and other forms of exploitation of children. The possession of child pornography should also be criminalized. The laws should have extraterritorial application.

255. States and national and international organizations should address the fact that new laws may be needed to counter new forms of technology used for child exploitation. Peer group pressure in the computer industry and the mass media could also be fostered as a watchdog against abuse by members of these sectors. Those who provide services in developing films, processing videos and facilitating mass communications should be requested to report instances of child exploitation to the law enforcement authorities.

256. The business sector, including employers' federations, trade unions and the service industry, should promote a worldwide strategy for child protection. This may be done by adopting a "Business Code of Conduct for Child Protection" which would put forward ways and means of preventing and eliminating child exploitation.

257. As the sale of children, child prostitution and child pornography are increasingly transnational, States should expand extradition arrangements, mutual assistance agreements and less formal types of inter-State cooperation so as to facilitate the transfer of alleged criminals to face charges in the country where the abuse has taken place and to facilitate the giving of testimony by children in an appropriate atmosphere.

258. States and national and international organizations should ensure that there are effective laws, policies and a medical code of ethics to prevent commercialization of in vitro fertilization and surrogacy. The close cooperation of the medical sector is sought to establish rules for these practices. Bilateral and transfrontier arrangements are needed to prevent "forum shopping" for services which give rise to abuses.

259. States and national and international organizations should foster changes to traditions which perpetuate child exploitation, not only through legislative enactments but also through establishing a broader educational base and through consciousness raising. Financial inducements may sometimes help to nurture constructive changes of behaviour that will benefit children.

260. States and national and international organizations should re-examine their development policies and programmes to integrate child development and protection more concretely into their implementation, and reallocate resources, particularly away from arms purchases, to social development, especially in relation to the protection of children's rights.

261. States and national and international organizations should promote a reorientation of incentives from the past emphasis on "economic investment promotion" for industries to the more urgent call for "social development promotion" with the child's best interests in mind. In this respect, incentives, such as tax exemptions, should be accorded more broadly to non-governmental organizations and community initiatives that invest in child survival, development, protection and participation.